

**LONG-TERM  
POWER PURCHASE AGREEMENT  
(WIND POWER)**

**MADE**

**BETWEEN**

**PPM ENERGY, INC.,**

**AS SELLER**

**AND**

**CITY OF BURBANK, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA,**

**AS PURCHASER**

**DATED AS OF JUNE \_\_, 2006**

## TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	1
ARTICLE 2 TERM .....	1
2.1 Term.....	1
2.2 Survival of Provisions.....	1
2.3 Project PPA.....	2
ARTICLE 3 PURCHASE AND SALE OBLIGATIONS OF THE PARTIES .....	2
3.1 Delivered Energy .....	2
3.1.1 Energy Delivery .....	2
3.1.2 No Limit on Sources of Delivered Energy .....	2
3.2 Environmental Attributes.....	2
3.2.1 Purchase and Sale .....	2
3.2.2 Quarterly Transfer of Environmental Attributes by Attestation .....	2
3.2.3 Further Assurances .....	2
3.2.4 No Representation or Warranty .....	3
3.2.5 No Encumbrance of Environmental Attributes.....	3
3.2.6 Purchaser’s Right to Report.....	3
3.2.7 CAMD Program.....	3
3.3 Capacity Rights.....	3
3.3.1 Purchase and Sale of Capacity Rights .....	3
3.3.2 Representation Regarding Ownership of Capacity Rights .....	3
3.3.3 Further Assurances .....	4
3.4 Effect of Force Majeure Event.....	4
3.4.1 Definition of “Force Majeure Event.” .....	4
3.5 Breach by Third Party Affecting Purchaser’s Metered Output, Delivered Energy or Environmental Attributes .....	7
3.6 NTS Agreement .....	7
3.6.1 Reduction or Termination of Purchaser’s Transmission Rights Under NTS Agreement .....	7
3.6.2 Purchaser’s Duty to Maintain NTS Transmission Rights.....	7
ARTICLE 4 CONTRACT PRICE.....	9
4.1 Contract Price .....	9

4.2	No Change in Prices, Terms or Conditions .....	9
ARTICLE 5	SCHEDULING AND CURTAILMENT.....	9
5.1	General.....	9
5.2	WECC Expenses; Transmission Services; Change in Scheduling Protocols. ....	9
5.2.1	WECC Expenses and Transmission Services .....	9
5.2.2	Change in Scheduling Protocols .....	9
5.3	Rejection of Schedules.....	10
5.4	Monthly True-Up.....	10
5.4.1	Monthly Calculation of Purchaser’s Metered Output and Delivered Energy .....	10
5.4.2	True-Up Procedure .....	10
5.4.3	Schedule for True Up and Payment .....	12
5.5	Curtailments.....	13
5.5.1	Curtailments of Metered Output by Project Owner.....	13
5.5.2	Transmission Curtailments .....	13
5.5.3	Partial Curtailment Allocation .....	13
5.6	Real Time Wind Forecasting and Project Performance Data .....	13
ARTICLE 6	REGULATORY .....	14
6.1	FERC .....	14
6.1.1	Filing of Agreement.....	14
6.1.2	Confidentiality .....	14
6.1.3	Modification or Rejection .....	14
6.2	Resource Adequacy Requirements .....	14
ARTICLE 7	BILLING AND PAYMENTS .....	14
7.1	Billing and Payment.....	14
7.1.1	Calculation of Delivered Energy; Invoices and Payment .....	14
7.1.2	Disputed Invoices .....	15
7.1.3	Set-offs and Deductions.....	15
7.1.4	Interest on Past Due Amounts .....	15
7.1.5	Form and Transmittal of Invoices.....	16
7.2	Title and Risk of Loss .....	16
7.2.1	Environmental Attributes.....	16

	7.2.2 Delivered Energy .....	16
ARTICLE 8	CREDIT .....	16
8.1	Credit Support.....	16
8.1.1	Seller’s Guarantor .....	16
8.1.2	Purchaser’s Credit Support .....	17
8.1.3	Cash As Additional Security.....	17
8.2	Allocation of Taxes.....	18
8.3	Financial Statements .....	19
8.3.1	Purchaser’s Financial Statements .....	19
8.3.2	Seller’s Financial Statements.....	19
8.4	Additional Security Not a Limit .....	20
8.5	Purchaser’s Source of Funds.....	20
ARTICLE 9	MEASUREMENT AND METERING.....	20
9.1	Metering Equipment .....	20
9.2	Measurements .....	21
9.3	Testing and Correction.....	21
9.4	Maintenance of Records .....	21
ARTICLE 10	RIGHT TO AUDIT .....	21
10.1	Audit Rights.....	21
10.1.1	Reciprocal Audit Rights.....	21
10.1.2	Audit Costs .....	21
10.1.3	Preservation of Records .....	21
10.2	Refunds of Overpayments and Underpayments .....	22
ARTICLE 11	NOTICES.....	22
11.1	General.....	22
ARTICLE 12	DEFAULTS AND REMEDIES .....	24
12.1	Events of Default .....	24
12.2	Rights Upon Event of Default .....	25
12.3	Cure Rights of Seller Lender .....	26
12.4	Net Out of Payables Upon Termination.....	26
12.5	Closeout Setoffs.....	27
12.6	Damages for Failure to Deliver Energy or Environmental Attributes.....	27
ARTICLE 13	LIMITATION OF LIABILITY .....	27

ARTICLE 14	DISPUTE RESOLUTION .....	27
14.1	Dispute Resolution.....	27
14.2	Meeting of Senior Management.....	28
14.3	AAA Arbitration .....	28
14.4	Place of Arbitration; Language.....	28
14.5	Jurisdiction.....	28
14.6	Confidentiality .....	28
14.7	Other Proceedings.....	28
14.8	Other Remedies.....	29
14.9	Fees and Costs .....	29
14.10	Enforcement of Arbitration Award.....	29
ARTICLE 15	ASSIGNMENT.....	29
15.1	Restriction on Assignments .....	29
15.2	Assumption by Assignee; No Release from Liabilities .....	30
15.3	Binding Effect.....	30
ARTICLE 16	FINANCING LIENS .....	30
16.1	Assignment as Security to Seller Lender.....	30
ARTICLE 17	REPRESENTATIONS, COVENANTS, AND WARRANTIES .....	32
17.1	Seller’s Representations and Warranties .....	32
17.2	Purchaser’s Representations and Warranties .....	33
ARTICLE 18	CONFIDENTIAL INFORMATION .....	33
18.1	Confidential Information .....	33
18.2	Permitted Disclosures. ....	35
18.3	Term of Confidentiality Agreement.....	35
ARTICLE 19	MISCELLANEOUS .....	36
19.1	Severability .....	36
19.2	Entire Agreement; Amendment .....	36
19.3	Waiver.....	36
19.4	Further Assurances .....	36
19.5	Third-Party Beneficiaries.....	36
19.6	Time .....	36
19.7	Headings, Captions; Construction; Conflict Between Agreement and Exhibits .....	36

19.8	Forward Contract .....	37
19.9	Press Releases .....	37
19.10	Governing Law .....	37
19.11	No Agency .....	37
19.12	Cooperation.....	37
19.13	Sophisticated Parties .....	37

## Exhibits

EXHIBIT A	Definitions
EXHIBIT B	Form of Attestation
EXHIBIT C	Scheduling Procedures
EXHIBIT D	Example of True-Up Calculation
EXHIBIT E	Form of Seller's Guaranty
EXHIBIT F	Metering Provisions

## POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“**Agreement**”), dated as of this \_\_\_\_ day of \_\_\_\_\_, 2006, is between **PPM Energy, Inc.**, an Oregon corporation (“**Seller**”), and **CITY OF BURBANK**, a municipal corporation of the State of California (“**Purchaser**”). Seller and Purchaser are sometimes referred to in this Agreement collectively as the “**Parties**” and individually as “**Party**.”

### RECITALS

**WHEREAS**, Seller has rights to the electric energy output and associated environmental attributes of a wind turbine electrical generation facility with an Installed Capacity (as defined below) of 144 MW on a site located in Uinta County, Wyoming (the “**Project**”); and

**WHEREAS**, Seller desires to sell, and Purchaser desires to purchase 3.47% of the Metered Output from the Project, which has an Installed Capacity of 144 MW (as of the Effective Date), and associated Environmental Attributes (each as defined below) as produced by the Project, all on the terms and conditions set forth in this Agreement,

**NOW THEREFORE**, in consideration of the mutual covenants contained in this Agreement, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS

Unless otherwise required by the context in which any term appears, (i) capitalized terms used in this Agreement shall have the meanings specified in **Exhibit A**; (ii) the singular shall include the plural and vice versa; (iii) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices,” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices, or exhibits of this Agreement; (iv) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (v) the words “herein,” “hereof,” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (vi) all accounting terms not specifically defined herein shall be construed in accordance with GAAP, consistently applied; (vii) references to this Agreement shall include a reference to all attached appendices, annexes, schedules, and exhibits, as the same may be amended, modified, supplemented, or replaced from time to time; and (viii) the masculine shall include the feminine and neuter and vice versa.

### ARTICLE 2 TERM

**2.1 Term.** This Agreement shall be deemed effective as of the date on which it has been signed by both Parties (the “**Effective Date**”) and, unless terminated as provided in this Agreement, shall remain in effect until 00:00 hours on July 1, 2022 (the “**Term**”).

**2.2 Survival of Provisions.** The obligations of Seller, Purchaser and Seller’s Guarantor to pay any moneys due hereunder, as well as Article 4, Section 5.4, Article 7,

Article 9, Article 10, Article 13, Article 14, and Articles 17 through 19, shall survive the expiration of the Term or any termination of this Agreement.

**2.3 Project PPA.** Seller shall not exercise its right to terminate the Project PPA for convenience under Section 2.5 of the Project PPA without Purchaser's prior written consent.

### **ARTICLE 3 PURCHASE AND SALE OBLIGATIONS OF THE PARTIES**

#### **3.1 Delivered Energy.**

**3.1.1 Energy Delivery.** In accordance with the terms and conditions of this Agreement, commencing on July 1, 2006, and continuing throughout the Term, Seller shall sell, schedule, and deliver at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all of the Delivered Energy in an amount equal to Seller's good faith estimate of Purchaser's Metered Output from the Project. Delivered Energy that is delivered at the Delivery Point shall be deemed delivered to Purchaser for purposes of this Agreement.

**3.1.2 No Limit on Sources of Delivered Energy.** Seller, to the extent reasonably possible given the intermittent nature of the wind resource, shall deliver energy in amounts equal to Seller's good faith estimates of Purchaser's Metered Output under Article 5 and **Exhibit C**. Seller is required to deliver electric energy from the Project to the electric grid, but may obtain electric energy for delivery from the Project or from market purchases or from any other source or sources or combination thereof as determined by Seller in its sole discretion to supply the quantity of energy to be delivered at the Delivery Point under this Agreement.

#### **3.2 Environmental Attributes.**

**3.2.1 Purchase and Sale.** Commencing on July 1, 2006, and continuing throughout the Term, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all right, title, and interest in Environmental Attributes, in an amount equal to Purchaser's Metered Output.

**3.2.2 Quarterly Transfer of Environmental Attributes by Attestation.** On or before the 30<sup>th</sup> Day of each calendar quarter (i.e., January 30; April 30; July 30; October 30), Seller shall document the production and transfer of Environmental Attributes under this Agreement by delivering to Purchaser an attestation for the Environmental Attributes produced by the Project, in whole MWh, in the preceding calendar quarter. The form of attestation is set forth as **Exhibit B**. Seller may change the form of attestation from time to time during the Term by giving at least thirty (30) days prior notice to Purchaser, subject to Purchaser's approval (which Purchaser shall not unreasonably withhold, condition or delay). If Purchaser has not objected to Seller's proposed changes to the form of attestation within thirty (30) days after receiving it, the changes shall be deemed approved. If WREGIS becomes operational, Seller shall use commercially reasonable efforts to cause the Environmental Attributes to be certified by WREGIS.

**3.2.3 Further Assurances.** At Purchaser's request and expense, the Parties shall execute all such documents and instruments in order to effect transfer of the Environmental



Attributes specified in this Agreement to Purchaser or its designees as Purchaser may reasonably request.

**3.2.4 No Representation or Warranty.** Seller makes no written or oral representation or warranty, either express or implied, regarding the current or future value or recognition of any Environmental Attributes or their characterization or treatment under Applicable Law.

**3.2.5 No Encumbrance of Environmental Attributes.** Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of Environmental Attributes granted hereunder to Purchaser to any Person other than Purchaser. Seller shall not report to any person or entity that such Environmental Attributes belong to anyone other than Purchaser.

**3.2.6 Purchaser's Right to Report.** Purchaser shall have the right to report to any Person or entity that Environmental Attributes purchased by Purchaser under this Agreement belong to Purchaser.

**3.2.7 CAMD Program.** In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other copies of all documents it submits to the CAMD to effectuate any transfers.

### **3.3 Capacity Rights.**

**3.3.1 Purchase and Sale of Capacity Rights.** For and in consideration of Purchaser's agreement to purchase from Seller the Delivered Energy and Environmental Attributes on the terms and conditions set forth in this Agreement, Seller transfers to Purchaser, and Purchaser accepts from Seller, any and all right, title, and interest that Seller has in and to Capacity Rights, if any, associated with the Purchaser's right to purchase energy and Environmental Attributes under this Agreement.

**3.3.2 Representation Regarding Ownership of Capacity Rights.** Seller represents that it has not sold and will not in the future sell or attempt to sell to any other person or entity the Capacity Rights, if any, associated with Purchaser's right to purchase energy and Environmental Attributes under this Agreement. During the Term of this Agreement, Seller shall not report to any person or entity that the Capacity Rights, if any, associated with Purchaser's right to purchase energy and Environmental Attributes under this Agreement belong to anyone other than Purchaser. Purchaser may at its own risk and expense report to any person or entity that Capacity Rights, if any, associated with Purchaser's right to purchase energy and Environmental Attributes under this Agreement belong to it. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SELLER MAKES NO WRITTEN OR ORAL REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, REGARDING THE CURRENT OR FUTURE EXISTENCE OF ANY CAPACITY RIGHTS WITH RESPECT TO PURCHASER'S RIGHT TO PURCHASE ENERGY AND ENVIRONMENTAL ATTRIBUTES UNDER THIS AGREEMENT OR OTHERWISE OR THE

CHARACTERIZATION OR TREATMENT OF CAPACITY RIGHTS UNDER APPLICABLE LAW. IN ADDITION, SELLER MAKES NO WRITTEN OR ORAL REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, REGARDING ITS RIGHT OR ABILITY TO PURCHASE SUCH CAPACITY RIGHTS UNDER THE PROJECT PPA. SELLER SHALL HAVE NO LIABILITY TO PURCHASER IF IT IS AT ANY TIME DETERMINED THAT SUCH CAPACITY RIGHTS DO NOT EXIST OR IF IT IS DETERMINED THAT PURCHASER HAS NO RIGHT TO PURCHASE SUCH CAPACITY RIGHTS UNDER THE PROJECT PPA.

**3.3.3 Further Assurances.** Subject to this Section 3.3, at Purchaser's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Purchaser. Purchaser shall bear the costs associated with preparing and executing any such documents and instruments.

### **3.4 Effect of Force Majeure Event.**

#### **3.4.1 Definition of "Force Majeure Event."**

(a) **General.** The term "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) **Specific Instances.** Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and are beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, Force Majeure Events may include without limitation:

(1) an act of God or the elements, subsurface or other site conditions (including, without limitation, environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats), extreme or severe weather conditions (including without limitation Non-Generating Wind Conditions), explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood or similar cataclysmic event, transportation delays, unavailability of materials, defective equipment, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party or its Affiliates or an event that constitutes an event of force majeure affecting the Project Owner under the Project PPA (whether such cause is similar or dissimilar to the foregoing);

(2) any restraint or restriction imposed by Applicable Law or other acts of governmental authorities, whether federal, state or local (including but not limited to an order issued by a court of competent jurisdiction pursuant to an Applicable Law concerning the environment if such order enjoins or prohibits a Party from performing its obligations under this Agreement), as long as the affected Party made a good faith, diligent effort to comply with the Applicable Law concerning the environment and made a good faith, diligent effort to oppose such governmental act or order; or

(3) electric transmission interruptions or curtailments because of physical events (not merely congestion or interruption of non-firm transmission) affecting the transmission facilities interconnected with the Project or transmission lying between the Project and the Delivery Point.

(c) **Exclusions.** The term “**Force Majeure Event**” does not include:

(1) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic, including (i) Purchaser’s ability to buy energy or Environmental Attributes at a lower price than the Contract Price, (ii) Seller’s ability to sell energy or Environmental Attributes at a higher price than the Contract Price, (iii) an increase in the cost of firm or non-firm transmission from the Project to the Delivery Point, and (iv) an increase in the cost of firm or non-firm transmission at and from the Delivery Point (*provided, however*, that this subparagraph (iv) does not limit Purchaser’s rights or obligations under Section 3.6),

(2) a governmental act by Purchaser that delays or prevents Purchaser from timely performing its obligations under this Agreement,

(3) electric transmission interruption or curtailment affecting transmission at and from the Delivery Point (unless such interruption or curtailment is caused by physical damage or destruction to transmission infrastructure caused by an act of God or the elements, explosion, fire, epidemic, mudslide, sabotage, terrorism, lightning, earthquake, flood or similar cataclysmic event);

(4) wind velocity at a wind turbine that is between 4 meters per second and 25 meters per second, inclusive;

(5) breach by a party or parties responsible for supplying energy to Seller for delivery to Purchaser under this Agreement (with the remedy for any such breach to be governed by Section 3.5), and

(6) breach by a party or parties responsible for supplying Environmental Attributes to Seller for delivery to Purchaser under this Agreement (with the remedy for any such breach to be governed by Section 3.5).

(d) **General Application Of Force Majeure Event.** Notwithstanding any other provision of this Agreement, each Party’s obligations under this Agreement shall be suspended by a Force Majeure Event but only to the extent that the Force Majeure Event prevents the affected Party from performing its obligations under this Agreement. The affected Party’s time for performance shall be extended by a period of time reasonably necessary to compensate for the delay caused by the Force Majeure Event, *provided that* (i) the affected Party shall use diligent efforts to remedy or overcome the Force Majeure Event; (ii) neither Party shall be required to settle any strike or labor dispute other than in its sole discretion, and (iii) this Section shall not be construed to extend the Term of this Agreement beyond the termination date of the Project PPA. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

**(e) Force Majeure Event Affecting Metered Output, Delivered Energy, or Environmental Attributes.**

**(1) Suspension of Deliveries.** If a Force Majeure Event affecting the Project, any of the Interconnection Facilities, or the Transmission System (including but not limited to a Force Majeure Event that affects the Project Owner) reduces or prevents deliveries of Purchaser's Metered Output, Delivered Energy, or Environmental Attributes, then upon notice to Purchaser, Seller shall have the right to suspend deliveries of Delivered Energy at the Delivery Point and associated Environmental Attributes for the duration of the Force Majeure Event. Energy deliveries suspended under this provision shall not be made up and shall not be included in the Monthly True-Up described in Section 5.4. Environmental Attributes suspended under this provision, if any, shall be retained by the Seller and shall not be transferred to the Purchaser. If the Project still produces Metered Output but the Force Majeure Event prevents Seller from delivering Delivered Energy at the Delivery Point, Seller shall have the right to sell the Project's energy output and associated Environmental Attributes to a third party for Seller's account to the extent and for the duration of the Force Majeure Event.

**(2) Replacement of Delivered Energy and Environmental Attributes.** If a Force Majeure Event occurs, Seller shall use commercially reasonable and diligent efforts to obtain Delivered Energy and Environmental Attributes from a replacement source or sources acceptable to Purchaser in the reasonable exercise of its discretion; *provided, however,* that Seller shall not be obligated to pay a greater price for such replacement Delivered Energy and Environmental Attributes than what it pays its supplier for the Metered Output and Environmental Attributes produced by the Project. As a condition to exercising its right not to buy replacement Delivered Energy and Environmental Attributes under the preceding proviso, Seller shall upon Purchaser's request provide Purchaser with evidence concerning the price that Seller is obligated to pay for Metered Output and Environmental Attributes pursuant to the Project PPA at the time of such Force Majeure Event (with such information to be treated as Confidential Information under Article 18).

**(3) Persistent Force Majeure Event.** If the Force Majeure Event affecting the supply of Delivered Energy and/or Environmental Attributes is material and prevents the supplier from delivering Delivered Energy and Environmental Attributes for a period of more than eighteen (18) consecutive months and Seller has not been able to arrange for a substitute source or sources of energy and Environmental Attributes acceptable to both Parties, either Party may terminate this Agreement; *provided, however,* either Party shall have the right to extend such eighteen (18) month period by an additional six (6) months if the Force Majeure Event can be corrected through repair, restoration or other action or effort by either Party, and that Party shall have furnished to the other Party a reasonably acceptable proposal or plan for such repair, restoration or other action or effort before the expiration of the eighteen (18) month period and is diligently pursuing such proposal or plan. Neither Party shall be liable for such termination.

**(f) Effect of Judgments on a Force Majeure Event.** The fact that a court of competent jurisdiction has issued a judgment, or order, against a Party shall not in and of itself mean that the event was caused by the affected Party's "negligence" or "fault" as used in this Section 3.4.

**3.5 Breach by Third Party Affecting Purchaser's Metered Output, Delivered Energy or Environmental Attributes.** If the Project Owner breaches its duty under the Project PPA to deliver Metered Output or Environmental Attributes from the Project, Seller shall (i) use commercially reasonable and diligent efforts to compel the Project Owner to perform its obligations as required by the Project PPA and to recover damages for the breach, and (ii) use commercially reasonable and diligent efforts to obtain Environmental Attributes from a replacement source acceptable to Purchaser in the reasonable exercise of its discretion together with associated Delivered Energy; *provided, however*, that Seller shall not be obligated to pay a greater price for replacement Environmental Attributes and Delivered Energy than what it pays Project Owner for such Environmental Attributes and Metered Output. Any Purchaser's Metered Output not delivered to Seller as a result of a Project Owner breach shall not be made up and not included in the Monthly True-Up described in Section 5.4, and any associated Environmental Attributes not delivered to Seller as a result of Project Owner breach shall not be transferred to Purchaser. If Seller is unable, despite its commercially reasonable and diligent efforts, to compel the Project Owner to perform within two (2) years of a material breach of the Project PPA, or to identify a substitute source or sources of Environmental Attributes acceptable to both Parties and a substitute source or sources of Delivered Energy, either Party may terminate this Agreement. Neither Party shall be liable for such termination.

### **3.6 NTS Agreement.**

**3.6.1 Reduction or Termination of Purchaser's Transmission Rights Under NTS Agreement.** If the Purchaser's transmission rights under the NTS Agreement on the path from the Delivery Point to the IPP Substation are or will be permanently reduced or terminated, Purchaser shall promptly notify Seller of the date upon which the reduction or termination will occur.

**3.6.2 Purchaser's Duty to Maintain NTS Transmission Rights.** Purchaser shall use commercially reasonable efforts to maintain and/or obtain adequate NTS transmission rights to transmit Delivered Energy from the Delivery Point to the IPP Substation, including, but not limited to, the use of non-firm transmission if reasonably available in sufficient amounts for Purchaser to transmit Delivered Energy from the Delivery Point to the IPP Substation; *provided, however*, that (i) unless the lack of transmission expected to be available in the next Contract Year is reasonably likely to preclude Purchaser from transmitting Delivered Energy from the Delivery Point to the IPP Substation in an amount equal to twenty-five percent (25%) or more of Purchaser's Metered Output, Purchaser shall be obligated to purchase and receive all Delivered Energy that can be transmitted from the Delivery Point pursuant to this Section 3.6.2, and (ii) Purchaser shall use commercially reasonable efforts to allocate available NTS transmission rights to accept Delivered Energy and transmit it to the IPP Substation before using such NTS transmission right to accept or transmit energy from sources other than this Agreement, and in all cases before using such NTS transmission rights to accept or transmit energy under agreements or other arrangements entered into after the Effective Date of this Agreement. Purchaser, in its sole discretion, may liquidate the energy and/or utilize alternate transmission arrangements to receive Delivered Energy at the Delivery Point in lieu of allocating NTS transmission rights pursuant to Section 3.6.2(ii); *provided, however*, if Purchaser opts not to allocate NTS transmission right as contemplated by Section 3.6.2(ii), Purchaser shall still be obligated to receive and pay for Delivered Energy at the Delivery Point.

(a) If Purchaser reasonably (i) determines that the average cost of NTS transmission required to transmit Delivered Energy from the Delivery Point to the IPP Substation impacted by the reduction or termination of the Purchaser's transmission rights under the NTS Agreement ("**Impacted NTS Transmission**") for the previous Contract Year exceeds \$3.00/MWh, or (ii) estimates that the average cost of Impacted NTS Transmission for the next Contract Year will exceed \$3.00/MWh, then Purchaser shall provide PPM with a statement detailing such Impacted NTS Transmission costs. If the statement reflects the average costs of Impacted NTS Transmission for the prior Contract Year, PPM shall (i) pay 50% of the difference between the average cost of Impacted NTS Transmission and \$3.00/MWh ("**Excess Incremental NTS Costs**"), up to \$2.50/MWh, and (ii) decide whether to pay 50% of Excess Incremental NTS Costs, up to \$2.50/MWh, of the next Contract Year. If the statement reflects the estimated average costs for the next Contract Year, PPM shall decide whether to pay 50% of Excess Incremental NTS Costs, up to \$2.50/MWh, of the next Contract Year. In either case, if PPM decides not to pay 50% of Excess Incremental NTS Costs of the next Contract Year, PPM can terminate this Agreement upon forty-five (45) Days written notice to Purchaser with respect to the portion of the Purchaser's Metered Output impacted by the Impacted NTS Transmission. If PPM elects to terminate this Agreement in whole or in part pursuant to this section, Purchaser may elect within thirty (30) Days after receiving PPM's notice of termination to bear 100% of the cost of Impacted NTS Transmission during the next Contract Year (in which case, PPM's notice of termination shall be deemed withdrawn). If Purchaser does not so elect, this Agreement shall be terminated without liability to either Party solely with respect to the portion of the Purchaser's Metered Output impacted by the Impacted NTS Transmission.

(b) If Purchaser reasonably determines that the total average cost of Impacted NTS Transmission for the next Contract Year will exceed \$8.00/MWh, the Purchaser shall have the right to terminate this Agreement upon forty-five (45) Days written notice to PPM with respect to the portion of the Purchaser's Metered Output impacted by the Impacted NTS Transmission. If Purchaser elects to terminate this Agreement in whole or in part under this Section, PPM may elect within thirty (30) Days after receiving Purchaser's notice of termination to bear 100% of the Purchaser's actual average cost of Impacted NTS Transmission in excess of \$8.00/MWh during the next Contract Year (in which case, Purchaser's notice of termination shall be deemed withdrawn); *provided, however*, upon such election, Purchaser's share of the cost of Impacted NTS Transmission shall remain \$5.50/MWh, as described in 3.5.2(a). If PPM does not so elect, this Agreement shall be terminated without liability to either Party solely with respect to the portion of the Purchaser's Metered Output impacted by the Impacted NTS Transmission.

(c) In the event the above calculations require the conversion of transmission costs from \$/kW-month to \$/MWh, a Project capacity factor of 32.4 percent shall be used.

(d) The process contemplated by this Section 3.6.2 shall be repeated for each Contract Year for which Purchaser procures replacement transmission services for Impacted NTS Transmission and shall be deemed commercially reasonable by the Parties.

## ARTICLE 4 CONTRACT PRICE

**4.1 Contract Price.** Throughout the Term, Purchaser shall pay the Seller \$63.00 per MWh of Delivered Energy (the “**Contract Price**”). The Contract Price shall be the total consideration owed by Purchaser to Seller for such Delivered Energy and for the Environmental Attributes related to the Purchaser’s Metered Output.

**4.2 No Change in Prices, Terms or Conditions.** The prices, terms and/or conditions of service specified in this Agreement shall remain in effect until expiration of the Term. Notwithstanding any provision in this Agreement, neither Party shall seek, nor shall support any third party in seeking, to prospectively or retroactively revise the prices, terms and/or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent the prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the prices, terms and/or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

## ARTICLE 5 SCHEDULING AND CURTAILMENT

**5.1 General.** Scheduling of the Delivered Energy sold and purchased under this Agreement shall be as set forth in **Exhibit C** (the “**Scheduling Procedures**”). Seller shall estimate in good faith the expected Metered Output of the Project on a day-ahead and an hour-ahead basis in accordance with Paragraph 2 of **Exhibit C**. Seller’s good faith estimate shall be based, at least in part, on an impartial third party wind forecast (unless the Parties otherwise agree). Seller shall multiply its hour-ahead estimate of Metered Output by 3.47% (rounded to the nearest whole MW – *e.g.*, if the allocation is calculated to be 6.5 MW, Seller will schedule 7 MW) to determine the quantity of Delivered Energy that, subject to the provisions of Article 5 and **Exhibit C**, Seller will schedule for delivery to Purchaser in that hour, and that Purchaser is obligated to accept from Seller, at the Delivery Point. In no event shall Seller schedule more than 5 MW in any given hour.

### **5.2 WECC Expenses; Transmission Services; Change in Scheduling Protocols.**

**5.2.1 WECC Expenses and Transmission Services.** Seller shall pay all WECC expenses and transmission charges and shall bear all responsibility for arranging and paying for Transmission Services (if any) applicable to the transmission of Delivered Energy to the Delivery Point. Purchaser shall bear all responsibility for paying for all WECC expenses and arranging and paying for all Transmission Services applicable to the acceptance of Delivered Energy at the Delivery Point and the transmission of Delivered Energy after the Delivery Point.

**5.2.2 Change in Scheduling Protocols.** If WECC changes its protocols for Day-Ahead or Hourly Scheduling after the Effective Date in a way that causes a conflict with

provisions of this Agreement, the Parties shall change the Scheduling Procedures as necessary to conform to the prevailing scheduling practices in effect at that time. Seller shall bear any costs and/or economic benefit or detriment resulting from such changes with respect to Day-Ahead and/or Hourly Scheduling up to the Delivery Point. Purchaser shall bear any costs and/or economic benefit or detriment resulting from such changes with respect to Day-Ahead and/or Hourly Scheduling at and after the Delivery Point. Any such changes, as well as any other changes to the Scheduling Procedures to which the Parties mutually agree, shall be set forth as a written amendment to **Exhibit C**.

**5.3 Rejection of Schedules.** If Seller schedules and delivers electric energy to the Delivery Point pursuant to Hourly Scheduling protocols outlined in **Exhibit C**, Purchaser shall be obligated to accept and pay for such electric energy at the Contract Price. If Seller provides Hourly Scheduling in the timeframe required in **Exhibit C** but the Purchaser rejects the schedule for any reason (other than Force Majeure), then Purchaser shall re-market the delivered energy from the Delivery Point at its discretion and cost. However, if Purchaser fails to re-market such energy delivered to the Delivery Point, then Seller shall re-market the rejected energy, and Purchaser shall pay Seller the positive difference that results from subtracting eighty percent (80%) of the Market Price Index for the given hour, quoted in dollars per MWh, from the Contract Price. If the subtraction of eighty percent (80%) of the Market Price Index for the given hour from the Contract Price is negative, no payment is due from either Party. If Purchaser rejects schedules in any given calendar month during the Term, Seller's invoice to Purchaser under Section 7.1.1 shall include the sum of all amounts due to Seller for each hourly schedule rejected under this Section 5.3. In any case, when all is settled, Seller shall transfer title of the Environmental Attributes associated with the rejected energy to Purchaser. If a Force Majeure event is the cause of Purchaser rejecting the energy, Purchaser will have no obligation to purchase or receive the effected Delivered Energy, but Seller will retain title to all effected Environmental Attributes.

#### **5.4 Monthly True-Up.**

**5.4.1 Monthly Calculation of Purchaser's Metered Output and Delivered Energy.** On or before the 20<sup>th</sup> Day of each calendar month (or the next succeeding Business Day if the 20<sup>th</sup> Day is not a Business Day), Seller shall calculate the quantities of (a) Delivered Energy (On Peak Hours and Off Peak Hours) and (b) Purchaser's Metered Output (On Peak Hours and Off Peak Hours), delivered to Purchaser under this Agreement during the immediately prior calendar month (the "**Measurement Month**").

#### **5.4.2 True-Up Procedure.**

(a) Seller shall compare the total number of MWh of Delivered Energy sold to Purchaser in the Measurement Month (On Peak Hours and Off Peak Hours) to the total number of MWh of Purchaser's Metered Output in the same Measurement Month (On Peak Hours and Off Peak Hours).

(b) If the amount of Delivered Energy sold to Purchaser during On Peak Hours in such Measurement Month was greater than 105% of the amount of Purchaser's Metered Output during On Peak Hours in the same Measurement Month, Seller will calculate the



difference between the Contract Price and the Market Price Index for On Peak Hours during that Measurement Month. If the Market Price Index for On Peak Hours for such Measurement Month is higher than the Contract Price, Purchaser will pay Seller an amount to be calculated as (x) the number of MWh by which the Delivered Energy sold to Purchaser during On Peak Hours in the Measurement Quarter exceeded 105% of the number of MWh of Purchaser's Metered Output during On Peak Hours in the Measurement Month, multiplied by (y) the difference (if any) between the Contract Price and the Market Price Index during On Peak Hours in the Measurement Month (with the difference to be stated as a positive number). If the Contract Price is higher than the Market Price, Seller shall pay such calculated amount to Purchaser.

(c) If the amount of Delivered Energy sold to Purchaser during Off Peak Hours in such Measurement Month was greater than 105% of the amount of Purchaser's Metered Output during Off Peak Hours in the same Measurement Month, Seller will calculate the difference between the Contract Price and the Market Price Index for Off Peak Hours during that Measurement Month. If the Market Price Index for Off Peak Hours for such Measurement Month is higher than the Contract Price, Purchaser will pay Seller an amount to be calculated as (x) the number of MWh by which the Delivered Energy sold to Purchaser during Off Peak Hours in the Measurement Month exceeded 105% of the number of MWh of Purchaser's Metered Output during Off Peak Hours in the Measurement Month, multiplied by (y) the difference (if any) between the Contract Price and the Market Price Index during Off Peak Hours in the Measurement Month (with the difference to be stated as a positive number). If the Contract Price is higher than the Market Price, Seller shall pay such calculated amount to Purchaser.

(d) If the amount of Delivered Energy sold to Purchaser during On Peak Hours in a Measurement Month is less than 95% of the amount of Purchaser's Metered Output during On Peak Hours in the same Measurement Month, Seller will calculate the difference between the Contract Price and the Market Price Index for On Peak Hours during that Measurement Month. If the Market Price Index for On Peak Hours for such Measurement Month is higher than the Contract Price, Seller will pay Purchaser an amount to be calculated as (x) the number of MWh by which 95% of the Purchaser's Metered Output during On Peak Hours in the Measurement Month exceeds the Delivered Energy sold to Purchaser during On Peak Hours in the Measurement Month, multiplied by (y) the difference (if any) between the Contract Price and the Market Price Index during On Peak Hours in the Measurement Month (with the difference to be stated as a positive number). If the Contract Price is higher than the Market Price Index, Purchaser shall pay such calculated amount to Seller.

(e) If the amount of Delivered Energy sold to Purchaser during Off Peak Hours in a Measurement Month is less than 95% of the amount of Purchaser's Metered Output during Off Peak Hours in the same Measurement Month, Seller shall determine the difference (stated in MWhs) between 95% of Purchaser's Metered Output during Off Peak Hours and the actual amount of Delivered Energy during Off Peak Hours in such Measurement Month. Seller will calculate the difference between the Contract Price and the Market Price Index for Off Peak Hours during that Measurement Month. If the Market Price Index for Off Peak Hours for such Measurement Month is higher than the Contract Price, Seller will pay Purchaser an amount to be calculated as (x) the number of MWh by which 95% of the Purchaser's Metered Output during Off Peak Hours in the Measurement Month exceeds the Delivered Energy sold to Purchaser during Off Peak Hours in the Measurement Month, multiplied by (y) the difference (if

any) between the Contract Price and the Market Price Index during Off Peak Hours in the Measurement Month (with the difference to be stated as a positive number). If the Contract Price is higher than the Market Price Index, Purchaser shall pay such calculated amount to Seller.

(f) If the amount of Delivered Energy sold to Purchaser during On Peak Hours in a Measurement Month exceeds 125% of Purchaser's Metered Output during On Peak Hours in the same Measurement Month, the excess deliveries above 125% shall be excluded from the monthly true-up contemplated by this Section 5.4 and PPM shall reimburse Purchaser an amount equal to the product of (i) the Contract Price, multiplied by (ii) the quantity of Delivered Energy (in MWh) delivered to Purchaser during On Peak Hours in such Measurement Month that exceeds 125% of Purchaser's Metered Output during On Peak Hours in the same Measurement Month.

(g) If the amount of Delivered Energy sold to Purchaser during Off Peak Hours in a Measurement Month exceeds 125% of Purchaser's Metered Output during Off Peak Hours in the same Measurement Month, the excess deliveries above 125% shall be excluded from the monthly true-up contemplated by this Section 5.4 and PPM shall reimburse Purchaser an amount equal to the product of (i) the Contract Price, multiplied by (ii) the quantity of Delivered Energy (in MWh) delivered to Purchaser during Off Peak Hours in such Measurement Month that exceeds 125% of Purchaser's Metered Output during Off Peak Hours in the same Measurement Month.

(h) The true up mechanism contemplated by this Section 5.4 shall be the method for truing up Purchaser's Metered Output to Delivered Energy but shall not affect Environmental Attributes. Regardless of any true up of energy, Purchaser shall be entitled to the Environmental Attributes associated with 100% of Purchaser's Metered Output in each Measurement Month, except as otherwise provided in Article 3.

(i) An example setting forth the calculation of the Monthly True-Up of Delivered Energy and Purchaser's Metered Output under certain stated assumptions is set forth on attached **Exhibit D**.

**5.4.3 Schedule for True Up and Payment.** Amounts owed by each Party to the other under this Section 5.4 shall be netted to a single amount and shall be included in the next monthly invoice issued by Seller pursuant to Article 7. Notwithstanding the foregoing, payments made under this provision shall be further adjusted in subsequent invoices to reflect final WECC settlements for the Measurement Month in question. In the event of a dispute by Purchaser of the true-up calculation, Purchaser shall so notify Seller and the Parties shall meet, by telephone conference call or otherwise, within ten (10) Business Days after the Seller's receipt of notice of dispute for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) Days after such initial meeting, either Party may immediately invoke the dispute resolution processes of Article 14.

## **5.5 Curtailments.**

**5.5.1 Curtailments of Metered Output by Project Owner.** Without limiting the generality of the definition of Metered Output or any other provision of this Agreement, Purchaser acknowledges and agrees that:

(a) Project Owner may curtail deliveries of Metered Output from the Project under the Project PPA if Project Owner is notified by Transmission Provider that a System Emergency exists; and

(b) Project Owner may curtail deliveries of Metered Output from the Project under the Project PPA to curtail deliveries of energy from the Project in accordance with Prudent Utility Practices and in a commercially reasonable manner if the Project Owner reasonably believes that such curtailment is necessary (i) to construct, install, maintain, repair, replace, remove or inspect any of its equipment, (ii) in connection with an emergency condition likely to result in significant damage to Project Owner's equipment or is deemed necessary by Project Owner to protect life or property, or (iii) to comply with Project Owner's obligations under its interconnection agreement with the PacifiCorp or its successor.

**5.5.2 Transmission Curtailments.** Seller shall be excused from scheduling and delivering Delivered Energy at the Delivery Point to the extent that non-firm transmission from the Project to the Delivery Point is not available on terms satisfactory to Seller in the commercially reasonable exercise of its discretion or is interrupted or curtailed for any non-Force Majeure reason; *provided however*, in the case of such curtailment, (a) Seller shall transfer to Purchaser title to the quantity of Environmental Attributes (on a per MWh basis) corresponding to the quantity of Purchaser's Metered Output during the periods of curtailed Delivered Energy, (b) the energy that is curtailed shall not be made up and (c) the quantity of Purchaser's Metered Output during the periods in which Delivered Energy is curtailed shall not be included in the monthly true-up calculation under Section 5.4.

**5.5.3 Partial Curtailment Allocation.** To the extent that the Metered Output produced by the Project at the Project Delivery Point or Delivered Energy delivered at the Delivery Point is partially reduced or curtailed for any reason, Purchaser shall receive only 3.47% of Metered Output, if any, as so reduced or curtailed, and only the Environmental Attributes corresponding (and a per MWh basis) with Purchaser's Metered Output as so adjusted.

**5.6 Real Time Wind Forecasting and Project Performance Data.** Seller shall make available to Purchaser on a real-time basis (a) web-based hourly forecasting data for the Project and (b) aggregated hourly turbine generation data for the Project. Purchaser shall keep all data strictly confidential under Article 18. Such real-time data will be storable and accessible for at least one (1) year after the data is first generated.

## **ARTICLE 6 REGULATORY**

### **6.1 FERC.**

**6.1.1 Filing of Agreement.** If required under Applicable Law, Seller shall file this Agreement with FERC for acceptance pursuant to the Federal Power Act.

**6.1.2 Confidentiality.** In making any such filing, Seller may request that, to the fullest extent permitted under Applicable Law, FERC keep the terms and provisions of this Agreement confidential. .

**6.1.3 Modification or Rejection.** If FERC's approval of this Agreement is required, either Party may terminate this Agreement by thirty (30) Days prior written notice to the other Party if (a) such approval is conditioned on economically significant modification of this Agreement (unless the Party adversely affected by the modification agrees to it), or (b) FERC rejects this Agreement.

**6.2 Resource Adequacy Requirements.** If the Purchaser's Metered Output under this Agreement will be counted toward the satisfaction of resource adequacy requirements, then any electrical energy delivered by Seller to Purchaser under this Agreement may be claimed by Purchaser, at Purchaser's sole cost, risk and expense, to meet such requirements; *provided, however,* that nothing in this Section shall be deemed to change Seller's obligations under this Agreement or to impose any obligations on Seller. Seller specifically disclaims any warranties or representations concerning anything respecting resource adequacy requirements ("**Resource Adequacy**"), and shall have no liability or obligation to Purchaser, and Purchaser shall remain obligated to perform this Agreement, if it is at any time determined by any person, entity or governmental instrumentality that (x) any aspect of the Project or electrical energy from the Project does not meet Resource Adequacy, or (y) Seller does not have the right to transfer or confirm any rights respecting Resource Adequacy to Purchaser under this Agreement, the Project PPA or otherwise.

## **ARTICLE 7 BILLING AND PAYMENTS**

**7.1 Billing and Payment.** Billing and payment for the Delivered Energy and all associated Environmental Attributes sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as set forth in this Section 7.1.

**7.1.1 Calculation of Delivered Energy; Invoices and Payment.** For each calendar month during the Term, commencing with the first calendar month in which Delivered Energy is scheduled by Seller to Purchaser in accordance with the terms of this Agreement, Seller shall calculate the amount of Delivered Energy and Environmental Attributes delivered to Purchaser during such calendar month pursuant to this Agreement. Not later than the tenth (10th) Day of each calendar month (or the next succeeding Business Day if such tenth Day is not a Business Day) (commencing with the calendar month next following the calendar month in which Delivered Energy is first provided by Seller to Purchaser in accordance with the terms of this Agreement), Seller shall deliver to Purchaser an invoice showing the amount of such

Delivered Energy and associated Environmental Attributes during the immediately preceding calendar month and Seller's computation of the amount due Seller in respect thereof, together with any amounts due to Seller under Section 5.4.

Not later than the later to occur of the following (the "**Due Date**"):

(a) the twenty-fifth (25<sup>th</sup>) Day of the calendar month immediately following the calendar month to which Seller's invoice relates (or the next succeeding Business Day, if such twenty-fifth (25<sup>th</sup>) Day is not a Business Day); or

(b) the fifteenth (15<sup>th</sup>) Day after receipt by Purchaser of Seller's monthly invoice (or the next succeeding Business Day, if such fifteenth Day is not a Business Day);

Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such monthly invoice.

**7.1.2 Disputed Invoices.** In the event of a disputed invoice, Purchaser shall pay the full amount of the disputed invoice when due, without prejudice. Purchaser may dispute invoice amounts as provided herein by giving Seller notice of the alleged errors along with Purchaser's payment of the disputed invoice. If Seller notifies Purchaser that Seller disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within five (5) Business Days of Seller's response for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) Days after such initial meeting, either Party may immediately invoke the dispute resolution processes of Article 14. If the Seller is found to be in error, Seller will refund to Purchaser the amount that Purchaser paid in excess of the amount that Purchaser actually owed plus interest on such excess payment from the date the same was paid by the Purchaser to (but not including) the date the refund thereof is actually received by the Purchaser from the Seller, such interest to be at an annual rate equal to the Interest Rate. If the Purchaser is found to be in error, Purchaser will pay to Seller the amount that Purchaser actually owed in excess of the amount that Purchaser actually paid plus interest on such excess amount from the payment was due by the Seller to (but not including) the date the payment thereof is actually received by the Seller from the Purchaser, such interest to be at an annual rate equal to the Interest Rate.

**7.1.3 Set-offs and Deductions.** Except as provided in Article 12 and in Section 5.4 (monthly true up), all payments hereunder shall be made without set-off or deduction; *provided, however*, if a Party suffers an Event of Default, the non-defaulting Party shall have the right to set off any amount due to the defaulting Party under this Agreement against any amount due to the non-defaulting Party under this Agreement as a result of such default.

**7.1.4 Interest on Past Due Amounts.** Any payment not made within the time limits specified in this Section 7.1 shall bear interest from the Due Date of such payment through (but not including) the date such payment is actually received by Seller or Purchaser, as the case may be. Such interest shall accrue at an annual rate equal to the Interest Rate.

**7.1.5 Form and Transmittal of Invoices.** Statements or invoices shall be sent to Purchaser by mail or facsimile to the address or facsimile number designated in Section 11.1. Purchaser may change the address or facsimile number by providing written notice to Seller. The invoice shall be in a form reasonably acceptable to both Seller and Purchaser.

**7.2 Title and Risk of Loss.** Title to and risk of loss of Delivered Energy and Environmental Attributes sold to Purchaser by Seller in accordance with this Agreement shall pass from Seller to and rest in Purchaser as follows:

**7.2.1 Environmental Attributes.** At time of production based on Purchaser's Metered Output, except as otherwise provided in Article 3 or Section 5.4.

**7.2.2 Delivered Energy.** When the Delivered Energy is delivered to Purchaser at the Delivery Point.

## **ARTICLE 8 CREDIT**

### **8.1 Credit Support.**

#### **8.1.1 Seller's Guarantor.**

(a) **Delivery of Guaranty.** Upon the Effective Date of this Agreement, Seller shall cause Seller's Guarantor to execute and deliver to Purchaser a guaranty in favor of Purchaser, under the terms of which the Seller's Guarantor unconditionally guarantees the full and prompt payment of Seller's obligations under this Agreement. Such guaranty from the Seller's Guarantor shall be in the form attached hereto as **Exhibit E** (with appropriate changes for the name and other entity references for Seller's Guarantor). Notwithstanding any other provision of this Agreement, the aggregate liability of Seller's Guarantor under any guaranty (or series of guaranties) shall not exceed \$50,000 per MW of the Project's Installed Capacity allocated to Purchaser, which, at the time of the Effective Date, amounts to \$250,000.

(b) **Downgrade Event.** Seller shall notify Purchaser in writing of the occurrence of any event which, with notice or the passage of time or both, would constitute a Downgrade Event with respect to the Seller's Guarantor, which notice shall be given by Seller within 24 hours of the occurrence of such event. If at any time there shall occur a Downgrade Event with respect to the Seller's Guarantor (or the Seller, if Seller has previously met the Credit Requirements), then the Purchaser may, by notice in writing to the Seller, require the Seller to provide Additional Security to Purchaser. If Seller fails to provide such Additional Security within thirty (30) days of the receipt of such notice from the Purchaser, then an Event of Default shall be deemed to have occurred pursuant to Section 12.1(d).

(c) **Return of Additional Security.** If the Seller or Seller's Guarantor satisfies the Credit Requirements at any time after Additional Security is posted under Section 8.1.1(b), Purchaser shall return the Additional Security to Seller by the close of business on the fifth (5th) Business Day following the receipt of a request therefor by Seller if such request is made before 10:00 a.m. Pacific time on a day (the "Notification Time"). If the request

is made after the Notification Time, the Additional Security shall be returned no later than the close of business on the sixth (6th) Business Day following receipt of the request. Any further Downgrade Event occurring after the return of Additional Security shall be subject to Section 8.1.1(b).

(d) **Effect of Seller Meeting Credit Requirements.** If at any time during the term of this Agreement Seller meets the Credit Requirements, Seller's Guarantor shall have the right to terminate the guaranty.

#### **8.1.2 Purchaser's Credit Support.**

(a) **Downgrade Event.** Purchaser shall notify Seller in writing of the occurrence of any event which, with notice or the passage of time or both, would constitute a Downgrade Event with respect to the Purchaser, which notice shall be given by Purchaser within 24 hours of the occurrence of such event. If at any time there shall occur a Downgrade Event with respect to Purchaser, then the Seller may, by notice in writing to the Purchaser, require the Purchaser to provide Additional Security to Seller. If Purchaser fails to provide such Additional Security within fifteen (15) Business Days of the receipt of such notice from the Seller, then an Event of Default shall be deemed to have occurred pursuant to Section 12.1(e).

(b) **Return of Additional Security.** If Purchaser satisfies the Credit Requirements at any time after Additional Security is posted under Section 8.1.2(a), Seller shall return the Additional Security to Purchaser by the close of business on the fifth (5th) Business Day following the receipt of a request therefor by Purchaser if such request is made before the Notification Time. If the request is made after the Notification Time, the Additional Security shall be returned no later than the close of business on the sixth (6th) Business Day following receipt of the request. Any further Downgrade Event occurring after the return of Additional Security shall be subject to Section 8.1.2(a).

**8.1.3 Cash As Additional Security.** If the Additional Security consists of cash, the Purchaser, the Seller and the Custodian shall enter into a cash collateral escrow agreement providing for the holding, investment and disbursement of such cash as provided in this Section (the "**Escrow Agreement**"). The Party posting such cash as Additional Security shall select the Custodian, subject to the approval of the other Party (which approval shall not be unreasonably withheld, conditioned or delayed). The Escrow Agreement shall contain such terms and conditions as are commercially reasonable in light of the purposes for which it is entered into and shall have terms and conditions that are otherwise reasonably satisfactory to each Party and the Custodian. Without limiting the generality of the foregoing, the Escrow Agreement shall contain the following terms and provisions:

(a) pending disbursement thereof in accordance with the terms of the Escrow Agreement, the cash held thereunder by the Custodian shall be invested, to the extent possible, at the direction of the Party posting such Additional Security in:

(1) bills, notes or other securities issued or guaranteed by the United States of America or by any agency, authority or instrumentality thereof, with maturities of not more than ninety (90) Days;

(2) certificates of deposit, bankers acceptances, time deposits and promissory notes issued by any domestic or foreign bank with assets in excess of \$1 billion, with maturities of not more than ninety (90) Days; or

(3) investments in “money market funds” within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended (the “1940 Act”); *provided, however,* that if the entity posting the cash collateral is Seller’s Guarantor then (x) cash held by the Custodian shall not be invested in any money market fund that invests in “Second Tier Securities” and “Second Tier Conduit Securities” within the meaning of Rule 2a-7(a)(20) of the 1940 Act, and (y) the investment of the Seller’s Guarantor in any particular money market fund shall not exceed five percent (5%) of the net assets of such fund (with Seller’s Guarantor to coordinate with the Custodian concerning its money market fund investments);

(b) the Party posting such Additional Security shall be responsible for paying all Taxes on earnings on such investments;

(c) all interest and investment proceeds with respect to such cash shall accrue for the benefit of the Party posting such Additional Security and shall be paid to that Party monthly;

(d) the fees and expenses of the Custodian and any Taxes on interest and investment proceeds shall be paid by the Party posting the Additional Security;

(e) the posting Party shall grant to the Party benefiting from the Additional Security a valid, first priority security interest in the cash and the Escrow Agreement contemplated by this provision and shall take such other steps as may be reasonably required to protect the cash against the bankruptcy, insolvency or creditors of the posting Party;

(f) provide that to the extent that the benefiting Party has drawn down the amount of such Additional Security as provided in Section 8.1.3(g) below, the posting party shall not be obligated to replenish or restore the amount so drawn; and

(g) provide that upon written demand from the Party benefiting from the Additional Security certifying that such benefiting Party is entitled hereunder to draw down all or a portion of such Additional Security (with the agreed-upon form of demand certificate to be included as an Exhibit to such Escrow Agreement), the Custodian shall, without further condition or action or consent on the part of any Party or any other person, no sooner than two (2) Business Days and no later than five (5) Days after the date of such written demand, pay to such benefiting Party an amount equal to the lesser of: (i) the amount requested in such demand; or (ii) the amount of such Additional Security then remaining on deposit with the Custodian.

**8.2 Allocation of Taxes.** Seller shall pay or cause to be paid all Taxes on or with respect to the Project or on or with respect to the delivery and sale of Delivered Energy and/or Environmental Attributes to the Purchaser that are imposed before the delivery of Delivered Energy at the Delivery Point and prior to transfer to Purchaser of the Environmental Attributes. Purchaser shall pay or cause to be paid all Taxes, if any, on or with respect to the delivery and sale of Delivered Energy and/or Environmental Attributes to the Purchaser that are imposed at and after the delivery of the Delivered Energy to the Purchaser at the Delivery Point and on or



after transfer to Purchaser of the Environmental Attributes. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such responsible Party shall promptly reimburse the other for such Taxes. Both Parties shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with their intent to minimize Taxes. In the event any of the sales of Delivered Energy or Environmental Attributes hereunder are exempt from or not subject to any particular Tax(es), the Purchaser shall provide Seller with all necessary documentation required to evidence such exemption or exclusion within the time period required by Applicable Law. In the event Purchaser does not provide such documentation, then Purchaser shall indemnify, defend, and hold Seller harmless from any liability with respect to Tax(es) from which Purchaser claims it is exempt or excluded.

### **8.3 Financial Statements.**

**8.3.1 Purchaser's Financial Statements.** Purchaser shall provide Seller with copies of its most recent financial statements on or before January 31 of each year during the Term. Purchaser may deliver unaudited financials in satisfaction of this requirement, as long as audited financials are produced in the ordinary course and promptly delivered as soon as they are available. In addition, Purchaser shall promptly provide to Seller financial statements and other financial information reasonably requested by such other Party for the purposes of this Agreement and the Seller's Guarantor's guaranty. If Purchaser does not provide such information within ten (10) days of a request, the requesting Party may send a written notice demanding the delivery of such information in accordance with this Section. If the requested information is not delivered within the thirty (30) day period, or if Purchaser is not otherwise able to show that a Downgrade Event has not occurred, Seller shall be entitled to assume that a Downgrade Event has occurred. All such financial information will be treated as confidential information subject to Article 18 of this Agreement.

#### **8.3.2 Seller's Financial Statements.**

(a) During such times that Seller satisfies the Credit Requirements and therefore is not maintaining a guaranty from the Seller's Guarantor, Seller shall make available to Purchaser for examination copies of Seller's most recent financial statements for each fiscal year within 120 days after the end of each fiscal year during the Term. Seller shall make such financial statements available to Purchaser during business hours at such mutually convenient place as the Parties may agree to from time to time. Seller may deliver unaudited financials in satisfaction of the financial statement requirement set forth in this Section; *provided, however*, that any audited financials that are produced shall be promptly delivered to Purchaser for examination as soon as they are available.

(b) Purchaser shall have the right (i) to examine and inspect the financial statements that Seller is required to provide for examination under this Section (but notwithstanding any contrary provision this Agreement, shall not have the right to receive copies thereof), and (ii) to prepare or dictate written notes, tables, charts, graphs, memoranda, reports or summaries regarding information contained in each financial statement for the purpose of determining Seller's compliance with this Agreement, including, but not limited to, descriptions of the format, content, length or presentation of each financial statement and notes of any and all data contained therein, including, but not limited to, notes concerning Seller's operating

revenues, net income and loss, asset value, capital expenditures, short-term and long-term liabilities, and notes of any other financial data that Purchaser deems appropriate in its sole discretion to evaluate Seller's financial condition and creditworthiness. Purchaser's rights to examine the financial statements shall not include the right to make or retain copies of such financial statements, except as mutually agreed in writing by the Parties. Seller shall bear any cost and expense of providing the financial statements for examination.

(c) Notwithstanding the foregoing, Seller shall not be required to provide Purchaser with any of Seller's financial statements or financial information while a guaranty from Seller's Guarantor is in place (with the duty of Seller's Guarantor to provide such information to be governed by the terms of the guaranty).

(d) If Seller does not provide information that it is required to provide under this Section within ten (10) Days after a request, Purchaser may send a written notice demanding the delivery of information in accordance with this Section. If the requested information is not delivered within thirty (30) Days after receipt of such written notice, or if the Seller is not otherwise able to show that a Downgrade Event has not occurred, Purchaser shall be entitled to assume that a Downgrade Event has occurred.

(e) All information provided under this Section and all notes, tables, charts, graphs, memoranda, reports or summaries thereof shall be treated as confidential information subject to Article 18 of this Agreement.

**8.4 Additional Security Not a Limit.** Notwithstanding the other provision of this Agreement, the Additional Security contemplated by this Agreement: (a) constitutes security for, but is not a limitation of, either Party's obligations under this Agreement, and (b) shall not be the non-defaulting Party's exclusive remedy against the defaulting Party for the defaulting Party's failure to perform in accordance with this Agreement.

**8.5 Purchaser's Source of Funds.** The obligation of the Purchaser to pay amounts required under this Agreement shall be payable solely from the revenues and funds of the Purchaser's electric revenue fund:

## **ARTICLE 9 MEASUREMENT AND METERING**

**9.1 Metering Equipment.** Pursuant to the Project PPA, Seller shall cause the Project Owner or the Transmission Provider to provide, install, own, operate, and maintain all metering and data processing equipment needed for the registration, recording, and transmission of information regarding the Metered Output generated from the wind turbines at the Project (the **"Project Owner's Meters"**). Project Owner's Meters and data processing equipment shall be revenue quality and meet or exceed the Technical Requirements. The Project Owner's Meters are installed on the low voltage side of the Project Substation transformer immediately prior to the Project Delivery Point. Project Owner's Meters shall be adjusted to account accurately for substation transformer losses to Purchaser's reasonable satisfaction (so that the amount paid by the Purchaser for Purchaser's Metered Output will not include such losses).

**9.2 Measurements.** Readings of Project Owner's Meters shall be conclusive as to the amount of Metered Output generated by the Project; *provided, however*, that if any of Project Owner's Meters is out of service or is determined to be registering inaccurately, measurement of Metered Output delivered hereunder shall be determined as set forth in **Exhibit F**.

**9.3 Testing and Correction.** Seller shall use commercially reasonable efforts under the Project PPA to cause the Project Owner or the Transmission Provider to test and verify the accuracy of Project Owner's Meters at least annually and at Project Owner's expense. Each Meter shall be accurate within a one-half percent (0.5%) variance. The steps set forth in Paragraph 2 of **Exhibit F** shall be taken to resolve disputes regarding the accuracy of the Project Owner's Meters.

**9.4 Maintenance of Records.** Seller shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates, or statements of charges submitted hereunder until the later of (i) two (2) years from the delivery date of the invoice associated with such data, estimates or statements of charges, or (ii) if there is a dispute related to an invoice, the date on which the dispute is resolved.

## **ARTICLE 10 RIGHT TO AUDIT**

### **10.1 Audit Rights.**

**10.1.1 Reciprocal Audit Rights.** Each Party shall be subject at any time during its regular business hours, but without undue interference to the conduct of its business and with at least five (5) Business Days prior written notice, to audits by the other Party and/or its designee (collectively defined as "**Authorized Auditors**"), related to all billings under this Agreement and to the audited Party's compliance with all Agreement requirements relative to practices, methods, procedures, calculations, and documentation. The Authorized Auditors shall have access to all pertinent records and data, regardless of form, related to the Agreement, including those related to invoices, Environmental Attributes, and transmission of Purchaser's Metered Output and Delivered Energy both to and from the Delivery Point. The Authorized Auditors shall also have the right to reproduce, photocopy, download, transcribe, and the like any such records; *provided, however*, that Purchaser's Authorized Auditors may not copy such records (and may only take notes thereof) to the extent that Purchaser would be required to release those records to third parties in response to requests made under Applicable Law.

**10.1.2 Audit Costs.** The auditing Party shall bear its own costs of performing such audits or causing them to be performed; *provided, however*, that the audited Party shall cooperate and not charge the Authorized Auditors for any reasonable costs (including, without limitation, the cost of photocopies) that the audited Party may incur as a result of such audits.

**10.1.3 Preservation of Records.** Each Party shall keep and preserve all records subject to audit under Section 10.1.1 for a period of not less than four (4) years from and after any related payment is made or, if the Agreement is terminated in whole or in part, until four (4) years after final Agreement closeout. Purchaser acknowledges that Project Owner is not required

to preserve records for more than two (2) years under the Project PPA and agrees that the requirements of this Section 10.1.3 apply only to records that actually come into Seller's possession and not to Project Owner's.

**10.2 Refunds of Overpayments and Underpayments.** For a period of eighteen (18) months from the date of any payment under the Agreement, the Authorized Auditors will have the right to examine all books, records, documents, and any other applicable data or evidence in order to challenge such payment. To the extent that the audit reveals inaccurate, incomplete, or non-current data, the data shall be considered defective. If the audit indicates that either Party has been overpaid, the overpaid Party, after ten (10) Business Days notice of such overpayment, refund to the affected Party the amount of the overpayment plus interest thereon from the date such overpayment was made by the affected Party to (but not including) the date the affected Party actually receives the refund thereof, such interest to be at an annual rate equal to the Interest Rate. If the audit discloses a billing error or errors that resulted in an underpayment, the underpaying Party, after ten (10) Business Days notice, shall pay to the affected Party the amount of the underpayment plus interest thereon from the Due Date thereof to (but not including) the date the affected Party actually receives the payment thereof, such interest to be at an annual rate equal to the Interest Rate.

## **ARTICLE 11 NOTICES**

**11.1 General.** Any notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself (and for its Default Notice Parties, as defined in Section 12.1 below) from time to time by notice hereunder:

To Seller:                      PPM Energy, Inc.  
   1125 NW Couch, Suite 700  
   Portland, OR 97209  
   Attention: Contract Administration  
   Fax No.: (503) 796-6905

To Seller (regarding notices concerning Environmental Attributes and attestations):

PPM Energy, Inc.  
1125 NW Couch, Suite 700  
Portland, OR 97209  
Attention: Director of Green Tags  
Fax No.: (503) 796-6950

With a copy to: Paul Kaufman  
General Counsel  
PPM Energy, Inc.  
1125 NW Couch, Suite 700  
Portland, OR 97209  
Fax No.: (503) 796-6907

PPM Energy, Inc.  
1125 NW Couch, Suite 700  
Portland, OR 97209  
Attention: Managing Director, Renewable Origination  
Fax No.: (503) 796-6906

To Purchaser: General Manager  
Burbank Water and Power  
Ronald E. Davis  
P.O. Box 631  
Burbank, CA 91503-0631

To Purchaser (invoices):

Chief Financial Officer  
Burbank Water and Power  
Robert Liu  
P.O. Box 631  
Burbank, CA 91503-0631

To Purchaser (notices concerning Environmental Attribute and attestations):

Power Resources Manager  
Burbank Water and Power  
Bruno Jeider  
P.O. Box 631  
Burbank, CA 91503-0631

Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

(a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelop in which such notice was deposited in the United States mail;

(b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier;

(c) if sent by fax and if concurrently with the transmittal of such fax the sending Party contacts the receiving Party at the phone number set forth above to indicate such fax has been sent (which indication by phone may be done by leaving a voicemail for the receiving Party at such phone number), at the time such fax is transmitted by the sending Party as shown by the fax transmittal confirmation of the sending Party; or

(d) if delivered in person, upon receipt by the receiving Party.

## **ARTICLE 12 DEFAULTS AND REMEDIES**

**12.1 Events of Default.** Each of the following shall constitute an “Event of Default” hereunder:

(a) a failure by a Party to pay any amount due hereunder (including in the case of Seller, failure to pay an amount due pursuant to Section 12.6 resulting from a failure to deliver energy or Environmental Attributes as required by this Agreement), if such failure is not cured within ten (10) Days of the date on which the nondefaulting Party sends notice of the default to the Default Notice Parties by payment of the amount due plus interest at an annual rate equal to the Interest Rate;

(b) any other material default (other than a default that, with notice and the passage of time or both, would constitute an Event of Default under Section 12.1(c), (d) or (e)) if such default has not been cured by the defaulting Party within sixty (60) Days after the date of receipt by the Default Notice Parties of written notice from the nondefaulting Party setting forth, in reasonable detail, the nature of such material default; *provided that* in the case of a material default that is not reasonably capable of being cured within the 60-Day cure period, the defaulting Party shall have additional time to cure the default if it commences to cure the default within such 60-Day cure period, it diligently pursues such cure, and such default is capable of being cured by the defaulting Party and is in fact cured within no more than 180 Days after receiving such notice; *provided further that*:

(1) the defaulting Party shall not be relieved of its duty to pay amounts due under this Agreement during the cure period, whether the amount due arises from the default or otherwise; and

(2) if the nondefaulting Party suffers damages under this Agreement because of the other Party’s material default, the nondefaulting Party shall be entitled to recover damages under this Agreement regardless of whether the other Party thereafter cures the default;

(c) the commencement of involuntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to any Party, including the involuntary appointment of any trustee, receiver, custodian, or the like of such entity or all or any substantial part of its assets, and such proceeding has not been terminated or dismissed with ninety (90) Days after the commencement thereof; or the commencement of voluntary bankruptcy, insolvency, reorganization, arrangement, composition,

readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to any Party, including the appointment, with the consent or acquiescence of the affected Party, of any trustee, receiver, custodian, or the like of such entity or all or any substantial part of its assets; or

(d) the occurrence of a Downgrade Event with respect to the Seller or Seller's Guarantor and the failure of Seller or Seller's Guarantor to provide to the Purchaser Additional Security within the time required by Section 8.1.1(b); or

(e) the occurrence of a Downgrade Event with respect to Purchaser and the failure of Purchaser to provide to the Seller Additional Security within the time required by Section 8.1.2(a).

As used herein, the term **"Default Notice Parties"** means: (i) in the case of a default by the Seller, the Seller, the Seller's Guarantor and the Seller Lender or Institutional Investor (if any); and (ii) in the case of a default by the Purchaser, the Purchaser.

Notwithstanding anything expressed or implied herein to the contrary:

(1) upon the occurrence of a default by Seller or Seller's Guarantor, Purchaser shall give any notice of such default to each of the Default Notice Parties; *provided that* Purchaser shall only be required to give such notice to Seller Lender or Institutional Investor (if any) if, prior to the occurrence of such default, Seller or Seller Lender or Institutional Investor has provided to the Purchaser written notice of the address, phone number and fax number to which notices to the Seller Lender or Institutional Investor are to be sent;

(2) upon the occurrence of a default by Purchaser, Seller shall give any notice of such default to each of the Default Notice Parties.

**12.2 Rights Upon Event of Default.** Upon the occurrence of an Event of Default by a Party and after any cure period applicable to such Event of Default as provided in Section 12.1, the nondefaulting Party shall have the following rights:

(a) to terminate this Agreement by written notice to the other Party;

(b) to suspend performance of its obligations and duties hereunder upon written notice to the defaulting Party;

(c) to continue performance under this Agreement; and

(d) to pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise, including but not limited to recovery of all damages caused by the breach of this Agreement; *provided, however*, that a dispute as to whether an Event of Default has occurred shall be resolved pursuant to the dispute resolution provisions of Article 14.

**12.3 Cure Rights of Seller Lender.** Notwithstanding anything expressed or implied herein to the contrary, in the case of an Event of Default by Seller, Purchaser shall provide Seller Lender or Institutional Investor (if any) with:

- (1) notice of such Event of Default;
- (2) if such Event of Default is a payment default arising under Section 12.1(a), thirty (30) Days from the date notice of such default is delivered to Seller Lender or Institutional Investor to cure such Event of Default; and
- (3) if such Event of Default arises under Section 12.1(b) or (c), ninety (90) Days from the date notice of such default is delivered to Seller Lender or Institutional Investor to cure such Event of Default, or in the case of an Event of Default under Section 12.1(b) or (c) that is not reasonably capable of being cured within such 90-Day cure period, the Seller Lender or Institutional Investor shall have additional time to cure such Event of Default if it commences to cure the Event of Default within such 90-Day cure period, it diligently pursues such cure, and such default is capable of being cured by Seller Lender or Institutional Investor and is in fact cured within no more than one hundred eighty (180) Days after receiving such notice; and
- (4) if such Event of Default arises under Section 12.1(d), ten (10) Days from the date notice of such default is delivered to Seller Lender or Institutional Investor to cure such Event of Default

Notwithstanding anything expressed or implied herein to the contrary, Seller Lender or Institutional Investor (if any) shall only be entitled to exercise its rights under this Section 12.3 if, prior to the occurrence of an Event of Default hereunder with respect to which Seller Lender or Institutional Investor seeks to exercise such rights, Seller or Seller Lender or Institutional Investor has provided to the Purchaser written notice of the address, phone number and fax number to which notices to the Seller Lender or Institutional Investor are to be sent; and

**12.4 Net Out of Payables Upon Termination.** Without limiting its remedies under this Agreement, upon termination of this Agreement for default, the nondefaulting Party may elect to aggregate all payments due and amounts otherwise owing under this Agreement into a single amount by: netting out (a) all payments and other amounts that are due to the defaulting Party under this Agreement, plus, at the option of the nondefaulting Party, any cash or other form of security then available to the nondefaulting Party pursuant to this Agreement, against (b) all payments and other amounts that are due to the nondefaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the **“Termination Payment”**) payable by one Party to the other within thirty (30) Days of the date on which the nondefaulting Party notifies the defaulting Party of the amount of the Termination Payment. The Termination Payment shall be payable to or from the nondefaulting Party, as appropriate. This provision is intended to net only amounts due under the terms of this Agreement, and the nondefaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the nondefaulting Party as a result of the defaulting Party’s default.



**12.5 Closeout Setoffs.** After calculation of the Termination Payment in accordance with Section 12.4, if the defaulting Party would be owed the Termination Payment, the nondefaulting Party shall be entitled, at its option and in its discretion, to set off against such Termination Payment any amounts due and owing by the defaulting Party to the nondefaulting Party under any other agreements, instruments or undertakings between the defaulting Party and the nondefaulting Party.

**12.6 Damages for Failure to Deliver Energy or Environmental Attributes.** If Seller fails to deliver energy or Environmental Attributes as required by this Agreement, Seller shall pay Purchaser compensatory cover damages equal to Purchaser's cost of replacing the Delivered Energy and Environmental Attributes that were not delivered by Seller as required by this Agreement (Purchaser's cost of replacing such Delivered Energy and Environmental Attributes being understood to be the positive difference, if any, between the price for such replacement Delivered Energy and/or Environmental Attributes and the Contract Price). Purchaser shall use commercially reasonable efforts to mitigate such damages. Purchaser shall not be obligated to terminate this Agreement in order to receive payment for such damages. Such compensatory cover damages shall be a payment obligation of Seller and shall be covered by the guaranty delivered by Seller's Guarantor (subject to the terms and conditions of that guaranty). If Seller fails to deliver energy or Environmental Attributes as required by this Agreement, Purchaser shall send Seller an invoice for amounts due under this Section 12.6. Such invoice shall set forth Purchaser's calculation of cover damages in reasonable detail. Seller shall pay Purchaser amounts due under Purchaser's invoice within ten (10) Days of receipt. If Seller disputes the invoice, in good faith, Seller shall nonetheless pay any undisputed amount no later than ten (10) Days after receipt of Purchaser's invoice, without prejudice. Any amount disputed by Seller in good faith shall be immediately submitted to dispute resolution under Article 14, and Seller shall pay any amount determined to be owed Purchaser (including interest at an annual rate equal to the Interest Rate) within five (5) Days after the dispute is resolved under Article 14.

## **ARTICLE 13 LIMITATION OF LIABILITY**

**EXCEPT TO THE EXTENT INCLUDED IN SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY HEREUNDER SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY AT LAW OR IN EQUITY. TO THE EXTENT IT IS APPLICABLE TO THE LIMITATIONS SET FORTH IN THIS ARTICLE 13, THE PARTIES HEREBY WAIVE CAL CIV CODE SEC 1542.**

## **ARTICLE 14 DISPUTE RESOLUTION**

**14.1 Dispute Resolution.** Disputes under this Agreement between Seller and Purchaser shall be resolved in accordance with the provisions of this Article 14.

**14.2 Meeting of Senior Management.** Any claim, counterclaim, demand, dispute, and controversy arising out of or relating to this Agreement or the relationship established by this Agreement, any provision hereof, the alleged breach thereof, or in any way relating to the interpretation or the subject matter of this Agreement, involving the Parties and/or their respective representatives (a **“Claim”**) shall, at the request of either Party, first be referred to a senior representative of each of the Parties for resolution on an informal basis as promptly as practicable. In the event the senior representatives are unable to resolve the dispute within thirty (30) Days of such referral or such other period as the parties may mutually agree, either Party may submit the matter to binding arbitration in accordance with this Article.

**14.3 AAA Arbitration.** Any Claim, even though any such Claim allegedly is extra-contractual in nature, whether such Claim sounds in contract, tort, or otherwise, at law or in equity, under state or federal law, whether provided by statute or the common law, for damages or any other relief, shall be resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. If Seller initiates arbitration it shall first comply with the claim filing requirements of California Government Code Section 901 et seq., to the extent applicable.

**14.4 Place of Arbitration; Language.** The place of arbitration shall be Riverside County, California. The language of the arbitration shall be English.

**14.5 Jurisdiction.** THE ARBITRATORS SHALL HAVE NO JURISDICTION OR AUTHORITY TO AWARD TREBLE, EXEMPLARY OR PUNITIVE DAMAGES OF ANY TYPE UNDER ANY CIRCUMSTANCES, WHETHER OR NOT SUCH DAMAGES MAY BE AVAILABLE UNDER ANY APPLICABLE LAW, AND EACH OF THE PARTIES HEREBY WAIVES THEIR RIGHTS, IF ANY, TO RECOVER ANY SUCH DAMAGES.

**14.6 Confidentiality.** The parties shall maintain in confidence the facts (a) that an arbitration under this Agreement has been commenced, (b) all documents and information exchanged during the course of the arbitration proceeding, and (c) the arbitrators' award; *provided, however*, that each of the Parties shall be entitled to disclose such matters to their own officers, directors and employees, their professional advisors and other representatives as necessary for the purposes of conducting the arbitration, and may make such disclosure in the course of legal proceedings as may be required to pursue any legal right arising out of or in connection with the arbitration. Subject to Article 18, the parties understand and agree, however, that Purchaser is subject to and must comply with the California Public Records Act, Government Code Section 6250 et seq. and the Ralph M. Brown Act, Government Code Section 54950 et seq. and all other requirements pertaining to open government.

**14.7 Other Proceedings.** If any applicable law or statute authorizes any form of court proceeding in any of the courts of the United States that in any way arises out of or is related to an arbitration conducted pursuant to this Agreement (**“Related Proceedings”**), then, to the extent that any such matter is in whole or in part eligible for resolution by a court of competent jurisdiction, each Party irrevocably:

(i) submits to the exclusive jurisdiction of a court of competent jurisdiction in the County of Los Angeles, California for the purposes of such Related Proceedings; and

(ii) waives any objection which it may have at any time to the laying of venue of any Related Proceedings brought in any such court, waives any claim that such Related Proceedings have been brought in an inconvenient forum, and further waives the right to object, with respect to such Related Proceedings, that such court does not have any jurisdiction over such Party.

If any arbitration is commenced under the Project PPA that involves the same facts and circumstances as are at issue in an arbitration taking place under this Agreement, each Party shall use reasonable efforts to cause the arbitration under this Article 14 to be coordinated with the arbitration under the Project PPA so as not to expose Seller to inconsistent results in the two proceedings.

**14.8 Other Remedies.** Nothing in this Article 14 shall be construed to delay or prevent a Party from seeking to exercise remedies of injunction or specific performance under this Agreement pending resolution of any dispute. Notwithstanding this Article 14, nothing in this Agreement shall be construed to prevent Seller from taking such action (including the assertion of a Claim against Purchaser other than as provided in Section 14.3) if such action is required to timely assert, preserve or maintain a Claim against Purchaser under Applicable Law.

**14.9 Fees and Costs.** Each Party shall bear its own attorneys' fees and costs of pursuing the arbitration and any litigation arising from this Agreement. The Parties shall share equally all fees and costs of the American Arbitration Association, the arbitrator and similar expenses.

**14.10 Enforcement of Arbitration Award.** The arbitrator's decision concerning the item or items in dispute shall be final and binding on the Parties and shall be enforceable in any court of competent jurisdiction.

## **ARTICLE 15 ASSIGNMENT**

**15.1 Restriction on Assignments.** Except as otherwise provided below, neither Party may assign this Agreement without the other Party's prior written consent, which such Party shall not unreasonably withhold, condition or delay. The nonassigning Party may withhold its consent if the other Party proposes to assign its rights or delegate its duties under this Agreement to any party that has a credit rating from S&P of "BBB" or less or has a credit rating from Moody's of "Baa2" or less. Any assignment in violation of this provision shall be void.

Notwithstanding the foregoing or anything expressed or implied herein to the contrary:

(a) Purchaser may, without the prior written consent of Seller, assign this Agreement:

Purchaser;

(1) to a purchaser of all or substantially all of the assets of the

(2) to an Affiliate of the Purchaser; or

(3) in connection with a merger of the Purchaser with another Person or any other transaction resulting in a change of control of the Purchaser;

*provided that* such purchaser, such Affiliate or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement; and

(b) Seller may, without the prior written consent of Purchaser, assign this Agreement:

(1) to a purchaser of all or substantially all of the assets of the Seller;

(2) to an Affiliate of the Seller; or

(3) in connection with a merger of the Seller with another Person or any other transaction resulting in a change of control of the Seller;

*provided that* such purchaser, such Affiliate or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement; and

(c) Purchaser may, without the consent of or notice to the Seller, sell, transfer, assign, convey, encumber or otherwise dispose of all or any portion of the Environmental Attributes and the Delivered Energy sold to Purchaser under this Agreement.

**15.2 Assumption by Assignee; No Release from Liabilities.** Any permitted assignee or transferee of a Party's interest in this Agreement shall assume all existing and future obligations of such Party to be performed under this Agreement. Unless otherwise agreed to by the Parties, upon any permitted assignment of this Agreement, the assigning Party shall nevertheless continue to be and remain liable for the performance of its obligations hereunder in accordance with the terms hereof; *provided, however*, that if the assignee meets the Credit Requirements, the assigning Party shall be released from the performance of its obligations under this Agreement for the period from and after the date of the assignment and assumption by the assignee.

**15.3 Binding Effect.** This Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.

## ARTICLE 16 FINANCING LIENS

**16.1 Assignment as Security to Seller Lender.** Seller, without approval of Purchaser, may grant a security interest in its interest under this Agreement to Seller Lender or Institutional Investor as security for any loan made to Seller. Notwithstanding the foregoing or anything else

expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to Seller Lender or Institutional Investor. Promptly after granting such security interest, Seller shall notify Purchaser in writing of the name, address, and telephone and facsimile numbers of each Seller Lender or Institutional Investor to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of Seller Lender or Institutional Investor to whom all written and telephonic communications may be addressed. After giving Purchaser such initial notice, Seller shall promptly give Purchaser notice of any change in the information provided in the initial notice or any revised notice.

If Seller encumbers its interest under this Agreement as permitted by this Section 16.1, the following provisions shall apply:

(a) Seller Lender or Institutional Investor shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller, and such act performed by Seller Lender or Institutional Investor shall be as effective to prevent or cure a default as if done by Seller.

(b) Upon the receipt of a written request from Seller or any Seller Lender or Institutional Investor, Purchaser shall execute or arrange for the delivery of such certificates, consents, opinions, and other documents as may be reasonably necessary for Seller to consummate any financing or refinancing and will enter into reasonable agreements with such Seller Lender or Institutional Investor that provide that Purchaser recognize the rights of such Seller Lender or Institutional Investor upon foreclosure of Seller Lender's or Institutional Investor's security interest and such other provisions as may be reasonably requested by any such Seller Lender or Institutional Investor, *provided, however*, that any such agreement shall not constitute a modification hereof unless Purchaser otherwise agrees in its sole discretion.

(c) Purchaser acknowledges that upon an event of default by Seller under any financing documents, any Seller Lender or Institutional Investor may (but shall not be obligated to) assume, or cause its designee to assume, all of the interests, rights, and obligations of Seller thereafter arising under this Agreement. Notwithstanding any such assumption, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Purchaser arising or accruing hereunder.

(d) Purchaser agrees that no Seller Lender or Institutional Investor shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Purchaser with respect to this Agreement except to the extent any Seller Lender or Institutional Investor has assumed the obligations of Seller hereunder pursuant to this Section 16.1; *provided that* Purchaser shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Seller Lender or Institutional Investor fails to perform Seller's obligations hereunder.

**ARTICLE 17**  
**REPRESENTATIONS, COVENANTS, AND WARRANTIES**

**17.1 Seller's Representations and Warranties.** Seller represents and warrants as follows:

(a) Seller is a corporation, duly organized and validly existing under the laws of the state of Oregon, authorized to conduct business in the states of Wyoming and California.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement.

(c) Seller has obtained, or will obtain prior to commencement of deliveries of Delivered Energy hereunder, all regulatory approvals required by any governmental authority, whether federal, state or local, in order to perform its obligations hereunder.

(d) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license, or approval that has not been obtained pursuant to any of the terms, conditions, or provisions of any law, rule, or regulation; any order, judgment, writ, injunction, decree, determination, award, or other instrument or legal requirement of any court or other agency of government; the documents of formation of Seller or any contractual limitation, restriction, or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness, or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing.

(e) Seller has taken all such action necessary to authorize the execution and delivery of, and the performance by Seller of its obligations under, this Agreement. Within ten (10) days of Purchaser's request for such documents, Seller shall provide Purchaser with a copy of a secretary's certificate confirming that Seller is authorized to enter into this Agreement.

(f) This Agreement is a legal, valid, and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(g) Seller is party to the Project PPA, pursuant to which Seller holds the right to purchase the Metered Output and Environmental Attributes generated by the Project in accordance with the terms of the Project PPA. The Project has an Installed Capacity of 144 MW as of the Effective Date.

(h) SELLER DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**17.2 Purchaser's Representations and Warranties.** Purchaser represents and warrants as follows:

(a) Purchaser is a California municipal corporation created pursuant to the laws of the State of California, authorized to conduct business in each jurisdiction where necessary for the conduct of its business, except where such failure does not have a material adverse effect on Purchaser's performance under this Agreement.

(b) Purchaser has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(c) To Purchaser's knowledge, the execution and delivery of this Agreement, the consummation of the transactions contemplated herein, and the fulfillment of and compliance by Purchaser with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license, or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule, or regulation; any order, judgment, writ, injunction, decree, determination, award, or other instrument or legal requirement of any court or other agency of government; the documents of formation of Purchaser or any contractual limitation, restriction, or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness, or any other agreement or instrument to which Purchaser is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing. Purchaser has, by proper agency action, taken all such action necessary or advisable to authorize the execution and delivery of, and the performance by Purchaser of its obligations under, this Agreement. Within ten (10) days of Seller's request, Purchaser shall provide Seller with a copy of all applicable documents authorizing Purchaser to enter into this Agreement (including resolutions and supporting reports and recommendations).

(d) This Agreement is a legal, valid, and binding obligation of Purchaser enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

## **ARTICLE 18 CONFIDENTIAL INFORMATION**

**18.1 Confidential Information.** The Parties have and will develop certain information, processes, know-how, techniques, and procedures concerning the Project and will also share certain information concerning their financial condition and, in the case of Seller, the condition of Seller's Guarantor (collectively, "**Information**") that they consider confidential and proprietary. Notwithstanding the confidential and proprietary nature of such Information, the

Parties (each, a “**Disclosing Party**”) may make this Information available to the other (each, a “**Receiving Party**”) subject to the following provisions of this Article 18:

(a) At the time of furnishing or making available for inspection such confidential or proprietary information, the Disclosing Party will expressly designate by label, stamp, or oral communication (to be confirmed in writing) the information that it considers to be confidential and/or proprietary; *provided, however*, that financial information provided by Seller or Seller’s Guarantor with respect to Seller or Seller’s Guarantor shall always be deemed to be confidential and proprietary.

(b) The Receiving Party’s obligations with respect to the use or disclosure of such Information will be as set forth in this Article 18.

(c) Upon receiving or learning of Information designated as confidential and/or proprietary by the Disclosing Party, the Receiving Party shall:

(1) treat such Information as confidential and use reasonable care not to divulge such Information to any third party except as required by law, subject to the restrictions set forth below;

(2) restrict access to such Information to employees (and others who agree to be bound by this Agreement) whose access is reasonably necessary for the purposes of this Agreement, including Persons who agree to be bound by this Agreement who may provide debt or equity financing to Seller;

(3) use such Information solely for the purposes of this Agreement; and

(4) upon the termination of this Agreement and at the request of the Disclosing Party, destroy or return any such Information in written or other tangible form and any copies thereof.

(d) The restrictions of this Article 18 do not apply to:

(1) Disclosure of information required to be disclosed pursuant to Applicable Law, including but not limited to the Ralph M. Brown Act and the California Public Records Act,

(2) Disclosure of information which, under customary financial practices, is included in information disclosed in Official Statements or other disclosure statements relating to the issuance of bonds, notes, commercial paper or other evidences of indebtedness (but not including disclosure of any hourly output or forecasting data received under this Agreement);

(3) release of this Agreement to the FERC, which entity may cause the document to become a public document;



(4) release of this Agreement or related staff reports to Purchaser's City Council or advisory board;

(5) other disclosures necessary to comply with Applicable Law or other applicable regulations;

(6) information that is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(7) information that is (i) in the possession of the Receiving Party prior to receipt from the Disclosing Party, or (ii) independently developed by the Receiving Party, provided that, in the case of clause (ii), the person or persons developing such information have not had access to any Information provided by the Disclosing Party; or

(8) information that is, in the reasonable written opinion of counsel of the Receiving Party, required or advisable to be disclosed pursuant to Applicable Law (including any Freedom of Information Act request); *provided, however*, that the Receiving Party, prior to such disclosure, shall, to the fullest extent possible under the circumstances, provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

## **18.2 Permitted Disclosures.**

(a) **Permitted Disclosures to Certain Third Parties.** Notwithstanding the foregoing, Seller may disclose Information to Seller Lender or Institutional Investor (if any) and each Party may disclose information any other entity expressing an interest in providing equity or debt financing, refinancing, or credit support to such Party or in acquiring such Party's assets or a direct or indirect interest in such Party (and to any agent of or consultant to such entity), and the agent or trustee of any of them so long as the party to whom Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

(b) **This Agreement itself not to be Regarded as Confidential.** The Parties agree that this Agreement shall not be regarded as confidential and shall be subject to disclosure in accordance with California law pursuant to the California public records act and the Ralph M. Brown act.

**18.3 Term of Confidentiality Agreement.** As between Purchaser and Seller, the terms and conditions of this Article 18 shall constitute the exclusive provisions relating to confidentiality of the matters under this Agreement. Information previously disclosed by one Party to the other (either directly or indirectly) pursuant to the Confidentiality Agreement between PPM Energy Inc. and Southern California Public Power Authority, executed on January 12, 2005, (the "**Prior Confidentiality Agreement**") shall be subject to the terms and conditions of this Article 18. Information disclosed by or to Southern California Public Power Authority itself shall remain subject to the terms and conditions of the Prior Confidentiality Agreement. The obligations of the Parties under this Article 18 shall remain in full force and effect for two years following the termination of this Agreement.

## **ARTICLE 19 MISCELLANEOUS**

**19.1 Severability.** The invalidity, in whole or in part, of any of the articles, sections or paragraphs of this Agreement will not affect the validity of the remainder of such articles, sections or paragraphs.

**19.2 Entire Agreement; Amendment.** This Agreement (including the attached Exhibits, which are incorporated by this reference) and all amendments to this Agreement contain the complete Agreement between Seller and Purchaser with respect to the matters contained in this Agreement and supersede all other Agreements, whether written or oral, with respect to the matters contained in this Agreement. No modification, amendment, or other change to this Agreement will be effective unless consented to in writing by each of the Parties.

**19.3 Waiver.** Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived or forborne any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

**19.4 Further Assurances.** The Parties shall do and shall perform all such acts and things; shall execute all such deeds, documents, and writings; and shall give all such further assurances as may be necessary to carry out the intent of this Agreement. In particular, if any governmental or administrative approval, permit, order, or other authorization shall be necessary relative to this Agreement and any provision of this Agreement or any transaction contemplated by this Agreement, each Party shall use all reasonable efforts to assist in the obtaining of such approval, permit, order, or other authorization.

**19.5 Third-Party Beneficiaries.** Seller's Guarantor shall be a third party beneficiary of the provisions of this Agreement pertaining to Seller's Guarantor. Except as expressly provided in this Agreement with respect to Seller's Guarantor, Seller Lender or Institutional Investor, there are no other third-party beneficiaries of this Agreement, and this Agreement shall not impart any rights enforceable by any Person that is not a Party.

**19.6 Time.** Unless otherwise specified in this Agreement, all references to specific times under this Agreement shall be references to Pacific standard or Pacific daylight savings time, whichever is then prevailing.

**19.7 Headings, Captions; Construction; Conflict Between Agreement and Exhibits.** All indexes, titles, subject headings, Section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term or provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof. Because both Parties have participated in the drafting of this Agreement, the usual rule of contract construction that resolves ambiguities against the drafter shall not apply.

**19.8 Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Seller is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

**19.9 Press Releases.** Except as otherwise required by Article 18, neither Party shall issue written any press release without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed.

**19.10 Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California without regard to otherwise governing principles of conflict of law.

**19.11 No Agency.** This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship, or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, act as or be an agent or representative of, or otherwise bind the other Party.

**19.12 Cooperation.** The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required in administering and performing the contract. If, during the Term hereof, cooperation requested by either Party will materially benefit a Party in performing this Agreement and is without detriment to the other Party, the Parties shall make reasonable efforts to provide such cooperation; *provided, however*, in the case of Purchaser, that such cooperation complies with Purchaser’s policies and Applicable Law and does not require approval by a governmental body. This Section 19.12 shall not apply to Purchaser’s determinations of confidentiality pursuant to the California Public Records Act or the Ralph M. Brown Act or to Seller’s rights under Article 18.

**19.13 Sophisticated Parties.** The Parties collectively have prepared this Agreement, and none of the provisions of this Agreement shall be construed against one Party on the ground that such Party is the author of this Agreement or any part of this Agreement. Each Party is sophisticated and has negotiated and entered into this Agreement with the assistance of its own advisors and consultants.

*[signature page follows]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and delivered as of the date and year first set forth above.

**PPM ENERGY, INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF BURBANK,  
a municipal corporation  
of the State of California**

By: \_\_\_\_\_  
Ronald E. Davis - General Manager  
Burbank Water and Power  
Date: \_\_\_\_\_

ATTEST:  
Office of the City Clerk

By: \_\_\_\_\_  
Margarita Campos, City Clerk

Approved as to Form and Legal Content:  
Dennis Barlow, City Attorney

By: \_\_\_\_\_  
Richard J. Morillo  
Sr. Asst. City Attorney

## **EXHIBITS**

EXHIBIT A	Definitions
EXHIBIT B	Form of Attestation
EXHIBIT C	Scheduling Procedures
EXHIBIT D	Example of True-Up Calculation
EXHIBIT E	Form of Seller's Guaranty
EXHIBIT F	Metering Provisions

## EXHIBIT A

### DEFINITIONS

**“Additional Security”** shall mean:

(1) a Letter of Credit in the amount of \$50,000 per MW of Project’s installed capacity allocated to Purchaser, which, as of the Effective Date, amounts to \$250,000; or

(2) cash (in immediately available funds) in the amount of \$50,000 per MW of Project’s installed capacity allocated to Purchaser, which, as of the Effective Date, amounts to \$250,000, which cash must be delivered to a Custodian to be held by the Custodian as security for the Party entitled to the benefits of the cash collateral pursuant to an escrow agreement satisfactory in form and substance to the Party for whose benefit such cash is being provided, which escrow agreement shall incorporate the provisions of Section 8.1.3 of this Agreement with respect to cash posted by or on behalf of the Seller; or

(3) a guaranty from a Qualified Guarantor in an amount capped at \$50,000 per MW of Project’s installed capacity allocated to Purchaser, which, as of the Effective Date, amounts to \$250,000, which shall guarantee

(i) Seller’s payment obligations or Purchaser’s payment obligations under this Agreement, as applicable; or

(ii) The obligations of Seller’s Guarantor under the guaranty executed and delivered by Seller’s Guarantor hereunder;

in either case on the same terms and conditions set forth in the form of guaranty attached to this Agreement as **Exhibit E** (with changes for the name and related entity information for the Qualified Guarantor).

**“Affiliate”** shall mean, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

**“Applicable Law”** shall mean, with respect to any Person and its Affiliates, all laws, constitutional provisions, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives, and requirements of all regulatory and other governmental authorities, in each case applicable to or binding upon such Person and, in the case of Seller, the Project (including the California Public Records Act and the Ralph M. Brown Act).

**“Business Day”** shall mean each Day that is not a weekend Day or a federal holiday.

**“CAISO”** shall mean the California Independent System Operator Corporation, or its successor.

**“CAMD”** shall mean the Clean Air Markets Division of the Environmental Protection Agency, any successor agency and any other state or federal entity that is given jurisdiction over a program involving transferability of Environmental Attributes.

**“Capacity Rights”** shall mean ownership of the right, if any, to capacity, resource adequacy, and/or reserves associated with the Purchaser’s Metered Output hereunder, as measured in MW.

**“Contract Price”** shall have the meaning set forth in Section 4.1.

**“Contract Year”** means July 1 of one year through June 30 of the next year.

**“Credit Requirements”:**

(1) Purchaser meets the Credit Requirements as long as the Credit Rating on Purchaser’s senior electric utility revenue bonds assigned by S&P or Moody’s is at least BBB- or Baa3, respectively.

(2) Seller meets the Credit Requirements if either it or Seller’s Guarantor has a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or higher by Moody’s; or (2) “BBB-” or higher by S&P.

**“Custodian”** shall mean a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least “A” by S&P or “A2” by Moody’s.

**“Day”** means a period of 24 consecutive hours beginning at 00:00 hours Prevailing Pacific Time on any calendar day and ending at 24:00 hours Prevailing Pacific Time on the same calendar day.

**“Day Ahead Scheduling”** shall have the meaning set forth in **Exhibit C**.

**“Default Notice Parties”** shall have the meaning as set forth in Section 12.1.

**“Delivered Energy”** shall mean the electric energy scheduled and delivered to Purchaser at the Delivery Point, as specified in Article 5 and Exhibit C.

**“Delivery Point”** means Mona (MDWP) as identified on Los Angeles Department of Water and Power’s OATT tariff on the Effective Date of this Agreement. If this definition of Mona (MDWP) changes in any material respect or the delivery point ceases to exist, Seller shall promptly designate an alternate Delivery Point that most nearly resembles (in terms of liquidity, homogeneity and relative economic impact on each Party) the previous definition of Mona; *provided, however*, that such designation shall be subject to the consent of Purchaser’s authorized representative, which such representative shall not unreasonably condition, withhold or delay.

**“Disclosing Party”** shall have the meaning set forth in Article 18.

**“Downgrade Event”** shall mean any event that results in a Party or Seller’s Guarantor, as applicable, failing to meet the Credit Requirements applicable to that Party or Seller’s Guarantor.

**“Due Date”** shall have the meanings set forth in Sections 7.1.1.

**“Effective Date”** shall have the meaning set forth in Section 2.1.

**“Environmental Attributes,”** also known as Renewable Energy Credits (RECs), shall mean any and all credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Purchaser’s Metered Output during the Term, or the generation, purchase, sale or use of Purchaser’s Metered Output from or by the Project during the Term, including without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (the **“UNFCCC”**) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any State or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the **“CAMD”**), but specifically excluding (i) the PTCs, (ii) any investment tax credits and any other tax credits associated with the Project, (iii) any state, federal or private cash payments or grants relating in any way to the Project, the output thereof or PTCs (including without limitation, any wind energy incentives to the Project), and (iv) any offsets, allowances or credits in respect of Purchaser’s Metered Output that is not purchased by Purchaser hereunder in breach of this Agreement. Environmental Attributes also includes any other environmental credits or benefits recognized in the future attributable to the Purchaser’s Metered Output during the Term, or the generation, purchase, sale or use of Purchaser’s Metered Output from or by the Project during the Term. One (1) MWh of electrical energy from the Project corresponds to one (1) MWh of Environmental Attribute.

**“Environmental Attributes Reporting Rights”** shall mean all rights to report ownership of the Environmental Attributes to any person or entity, under Section 1605(b) of the Energy Policy Act of 1992 , or for purposes of a renewable portfolio standard or for greenhouse gas compliance or otherwise

**“Escrow Agreement”** shall have the meaning set forth in Section 8.1.3.

**“Event of Default”** shall have the meaning set forth in Section 12.1.

**“Excess Incremental NTS Costs”** shall have the meaning set forth in Section 3.6.

**“Federal Power Act”** shall mean the Federal Power Act, as amended, 16 U.S.C. § 791a, *et seq.*

**“FERC”** shall mean the Federal Energy Regulatory Commission and its predecessor and



successor agencies.

**“Force Majeure Event”** shall have the meaning set forth in Section 3.4.

**“GAAP”** means generally accepted accounting principles in the United States of America.

**“Guaranteed Party”** shall have the meaning set forth in the definition of **“Letter of Credit”** in this Exhibit.

**“Hourly Scheduling”** shall have the meaning set forth in **Exhibit C**.

**“Information”** shall have the meaning set forth in Article 18.

**“Institutional Investor”** shall mean, collectively, any institutional investor or investors who acquire a direct or indirect interest in Seller as part of a transaction to ensure that the Facility is owned at least partly by an entity that can use the tax subsidies the federal government offers to encourage production of electricity from wind farms (including any transferees of such investors).

**“Installed Capacity”** shall mean the nominal or “nameplate” number of MW each wind turbine at the Project is capable of producing, multiplied by the total number of wind turbines installed at the Project. Because the Project has eighty (80) wind turbines each having a nameplate capacity of 1.8 MW, the Project’s Installed Capacity as of the Effective Date is 144 MW.

**“Interconnection Facilities”** shall mean the interconnection facilities, control and protective devices, and metering facilities that connect the Project with PacifiCorp or its successor’s Transmission System, including without limitation the Project Substation and the line connecting the Project Substation to the existing lines of the Transmission System.

**“Interest Rate”** shall mean an annual rate equal to the Prime rate in effect as of the date on which the payment in question is due plus two hundred (200) basis points (but in no event shall such interest rate exceed the maximum interest rate permitted by Applicable Law).

**“Kilowatt-hour” or “kWh”** shall mean a unit of energy equal to one kilowatt of power supplied or taken from an electric circuit for one hour.

**“Letter of Credit”** shall mean an irrevocable, transferable standby letter of credit in form and substance acceptable to the Party in whose favor the letter of credit is issued (the **“Guaranteed Party”**), naming the Guaranteed Party (and its permitted transferees) as the person entitled to demand payment and present draw requests thereunder, which letter of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating on its senior unsecured debt of:

(a) “A2” or higher from Moody’s; or

(b) “A” or higher from S&P;

(2) permits the Guaranteed Party to draw up to \$50,000 per MW of Project’s installed capacity allocated to Purchaser, which, as of the Effective Date, amounts to \$250,000 for the purpose of paying any and all amounts owing to the Guaranteed Party under this Agreement (*provided, however*, that the Party posting the letter of credit shall not be required to replenish the letter of credit to the extent that it is drawn down);

(3) if the Letter of Credit is issued by a foreign bank with a U.S. branch, permits the Guaranteed Party to draw upon the U.S. branch;

(4) additionally permits the Guaranteed Party to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date; and

(5) remains in place for at least ninety (90) days after any expiration or termination of this Agreement.

**“Lien”** means, with respect to any asset, any applicable mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any asset that it or one of its Subsidiaries has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

**“Market Price Index”** shall mean (i) with respect to calculations for On Peak Hours, the monthly arithmetic average of hourly prices for electrical energy transactions for firm “On Peak Hours” at Palo Verde, and (ii) and with respect to calculations for Off Peak Hours, the monthly arithmetic average of hourly prices for electrical energy transactions for firm Off Peak Hours at Palo Verde, and (iii) and with respect to settlement of rejected schedules under Section 5.3, the hourly prices at Palo Verde for the hours in which schedules are rejected, in each case as such prices are quoted in dollars per MWh in the IntercontinentalExchange™ (ICE) Firm Power Price Bulletin. If such ICE index price is no longer available or any replacement of that index ceases to be published during the Term, the Market Price Index shall be calculated as set forth above using prices of electricity (firm On Peak Hours and firm Off Peak Hours) at Palo Verde, quoted in dollars per MWh, as published in the Dow Jones Palo Verde Electricity Index or its successor. If both the ICE index price and the Dow Jones index price or any replacement thereof cease to be published, Seller shall propose as a replacement Market Price Index a substantially equivalent index that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of electricity (firm On Peak Hours and firm Off Peak Hours) for the delivery of energy for the applicable periods. Any proposed replacement market price index shall be subject to Purchaser’s consent, which shall not be unreasonably withheld, conditioned or delayed.

**“Measurement Month”** shall have the meaning given to that term in Section 5.4.

**“Megawatt-hour”** or **“MWh”** shall mean a unit of energy equal to one thousand kWh.

**“Meter”** shall mean an instrument or instruments meeting applicable Technical

Requirements and electric industry standards used to measure and record the volume of the Metered Output.

**“Metered Output”** shall mean the amount of electric energy generated by the Project, measured or calculated at the high side of the Project Substation, as measured in kilowatt-hours in accordance with Article 9. The Parties agree that Metered Output may vary depending upon wind conditions, mechanical availability of the wind turbines included in the Project, and other operational conditions affecting the Project and the Interconnection Facilities from time to time. Metered Output is intended to represent the quantity of electrical energy generated by the Project on an “as delivered” basis.

**“Moody’s”** shall mean Moody’s Investor Services, Inc. and any successor thereto.

**“MW”** shall mean a unit of power equal to one megawatt.

**“Non-Generating Wind Conditions”** means a wind velocity at a wind turbine that is less than 4 meters per second or greater than 25 meters per second.

**“NTS”** means the Northern Transmission System of the Intermountain Power Project (IPP) consisting of (i) a 230kV transmission line extending from IPP Substation to Gonder Substation, (ii) two 345 kV transmission lines extending from IPP Substation to Mona Substation, and (iii) the IPP Substation.

**“NTS Agreement”** means the Excess Power Sales Agreement dated December 1, 1980, whereby the named Utah municipal and co-op sellers transferred and assigned to Purchaser a percentage share of their rights to capacity and use of each segment of the NTS.

**“Off Peak Hours”** shall mean hours that the Market Price Index treats as being off peak.

**“On Peak Hours”** shall mean hours that the Market Price Index treats as being on peak.

**“Person”** shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

**“PPT”** means Pacific Prevailing Time.

**“Prime Rate”** shall mean the rate published in *The Wall Street Journal* as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

**“Project”** means the Southwest Wyoming Wind Project (*fka* the “Pleasant Valley Wind Energy Center”), a wind generation facility operational since December 2003 that consists of eighty (80) Vestas V80 1.8-MW wind turbines with an Installed Capacity of 144 MW and interconnected to PacifiCorp’s or its successor’s Transmission System. The Project is located on private land located in Uinta County, Wyoming, on which Project Owner obtained wind energy leases or other possessory real estate rights with the landowners permitting the construction and

operation of wind generation facilities for a defined term in exchange for financial compensation. Pursuant to the Project PPA, Seller purchases all of the Project's output from the Project Owner.

**"Project Delivery Point"** means the point or points where the Project's interconnection facilities will connect to PacifiCorp or its successor's Interconnection Facilities on the 138 kV (high side) of the transformer at the Project's substation.

**"Project Owner"** shall mean FPL Energy Wyoming, LLC, a Delaware limited liability company or its successors or permitted assigns, except that if the Project is financed pursuant to a capital lease, the Project Owner shall be the lessee under such capital lease.

**"Project Owner's Meters"** shall have the meaning set forth in Section 9.1.

**"Project PPA"** shall mean the Pleasant Valley Wind Energy Center Power Purchase Agreement dated as of May 28, 2003, between PPM Energy, Inc., as purchaser, and the Project Owner, as seller, as it may be amended for time to time.

**"Project Substation"** shall mean the substation constructed as part of the Project.

**"Prudent Utility Practices"** shall mean those practices, methods, and equipment, as changed from time to time, that:

(i) when engaged in are commonly used in the United States of America in prudent electrical engineering and operations to operate wind generation electrical equipment and related electrical equipment lawfully and with safety, reliability, efficiency, and expedition and at a reasonable cost; or

(ii) in the exercise of reasonable judgment considering the facts known when engaged in could have been expected to achieve the desired result consistent with good business practices, reliability, safety and expedition.

Prudent Utility Practices are not limited to optimum practice, method, selection of equipment, or act, but rather are a range of acceptable practices, methods, selections of equipment, or acts.

**"PTCs"** shall mean production tax credits under Section 45 of the Internal Revenue Code or under any state law as in effect on the Effective Date of this Agreement or any successor or other provision providing for a federal or state tax credit determined by reference to renewable electric energy produced from wind resources.

**"Purchaser"** shall mean City of Burbank, a municipal corporation of the State of California.

**"Purchaser's Metered Output"** shall mean an amount equal to 3.47% of the Metered Output.

**"Qualified Guarantor"** shall mean a Person who meets the Credit Requirements.

**"Receiving Party"** shall have the meaning set forth in Article 18.

**“Resource Adequacy”** shall have the meaning set forth in Section 6.2.

**“Seller’s Guarantor”** means Scottish Power Finance (US), Inc., a Delaware corporation, or any successor guarantor or guarantors designated by Seller that meets the Credit Requirements; *provided, however*, that Seller shall not be required to provide a guaranty from Seller’s Guarantor or any other Person at any time when Seller satisfies the Credit Requirements.

**“Seller”** shall mean PPM Energy, Inc., an Oregon corporation.

**“Seller Lender”** shall mean any and all individuals or entities or successors in interest thereof lending money or extending credit (including any financing lease) to Seller and to whom Seller intends to collaterally assign its interest in this Agreement and shall also include special-purpose Affiliates of the Seller that control the Seller.

**“S&P”** shall mean Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

**“System Emergency”** shall mean any abnormal system condition that requires automatic or immediate manual action to prevent or limit harm to or loss of life or property or loss of transmission facilities or generation supply that could immediately and adversely affect the reliability of the Transmission System or the systems to which the Transmission System is directly or indirectly connected.

**“Taxes”** shall mean all *ad valorem*, property, occupation, utility, gross receipts, sales, use, excise, and other taxes, governmental charges, surcharges, licenses, permits, and assessments of every type and description, other than taxes imposed on the net income of the taxpayer.

**“Technical Requirements”** shall mean those codes, standards, and specifications for the Meters that the Parties shall mutually agree upon in writing, including, without limitation, bi-directional measurement capabilities.

**“Term”** shall have the meaning set forth in Article 2.

**“Transmission Provider”** shall mean PacifiCorp, an Oregon corporation, or any replacement regional transmission organization or other entity that operates the Transmission System facilities interconnected with the Project and the facilities lying between such interconnection point and the Delivery Point.

**“Transmission Services”** shall mean all transmission services, wheeling services, scheduling services, imbalance services, congestion services, tagging services, dispatch services, ancillary services, control area services, and operating reserves (including all transaction charges, line loss charges, and any other charges for any such services).

**“Transmission System”** shall mean the transmission facilities, now or hereafter in existence and operated by Transmission Provider or its successor.

**“UNFCC”** shall have the meaning set forth in the definition of **“Environmental Attributes”** in this Exhibit.

**“WECC”** shall mean Western Electricity Coordinating Council or its successor.

**“WREGIS”** shall mean Western Renewable Energy Generation Information System.

## EXHIBIT B

### FORM OF ATTESTATION

#### PPM Energy, Inc. Green Tag Attestation and Bill of Sale

PPM Energy, Inc. ("PPM") hereby sells, transfers and delivers to \_\_\_\_\_ ("Customer") the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated energy for delivery to the grid (as such term(s) are defined in the \_\_\_\_\_ (identify contract) (the "Contract") dated \_\_\_\_\_, 200\_ between PPM and Customer) arising from the generation for delivery to the grid of the energy by the Facility described below:

Facility name and location: \_\_\_\_\_ Fuel Type: \_\_\_\_\_

Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_

(for facility that has added renewable capacity, show operational date and amount of new capacity)

As applicable: CEC Reg. no. \_\_\_\_\_ Energy Admin. ID no. \_\_\_\_\_ Q.F. ID no. \_\_\_\_\_

<u>Dates</u>	<u>MWhrs generated</u>
_____ 200_	_____
_____ 200_	_____
_____ 200_	_____

in the amount of one Environmental Attribute or its equivalent for each megawatt hour generated; and PPM further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Customer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and

[check one:]

\_\_\_ iv) PPM owns the Facility.

\_\_\_ iv) to the best of PPM's knowledge, each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from PPM to Customer all of PPM's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the energy for delivery to the grid.

Contact Person: \_\_\_\_\_ tel: 1-503-813-\_\_\_\_; fax: 1-503-813-\_\_\_\_

WITNESS MY HAND,

PPM ENERGY, INC.  
an Oregon corporation

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

This Attestation may be disclosed by PPM and Customer to others, including the Center for Resource Solutions, to substantiate and verify the accuracy of PPM's advertising and public communication claims, as well as in PPM's advertising and other public communications.

## EXHIBIT C

### Scheduling Procedures

#### 1. [INTENTIONALLY OMITTED]

#### 2. Day-Ahead and Hourly Scheduling.

2.1 **Definitions.** As used in this Agreement, the terms “**Day-Ahead Scheduling**” and “**Hourly Scheduling**” means scheduling procedures consistent with WECC’s Scheduling Protocols for day-ahead and hourly scheduling and the provisions of this Exhibit. If there is any conflict between this Exhibit and WECC Scheduling Protocols, this Exhibit shall control.

2.2 **Day-Ahead Scheduling.** At or before 6:00 am PPT on each applicable WECC pre-scheduling day during the Term, Seller shall provide Purchaser, via email or facsimile, with an estimated pre-schedule spreadsheet estimating Purchaser’s Metered Output for the next applicable Days. An Example of a Day Ahead pre-schedule spreadsheet is attached as **Exhibit C-1**. All Day-Ahead schedules provided under this Exhibit by Seller to Purchaser shall be non-binding, good-faith estimates only.

2.3 **Hourly Scheduling.** For the Day on which Purchaser’s Metered Output will be generated, Seller shall communicate by telephone the hourly schedule to Purchaser in accordance with time frame of WECC’s Scheduling Protocol, plus fifteen (15) minutes. For example, Seller would schedule hourly changes with Purchaser for hour ending at 1:00 pm PPT by 11:15 am PPT. Once an hour-ahead schedule is established under this Exhibit for an hour, the schedule shall remain fixed for such hour; *provided, further* that (a) to the extent permitted by WECC Scheduling Protocols, Seller shall have the right to make real-time schedule changes to the extent required by a Force Majeure Event, System Emergency or curtailment under Section 5.5, and (b) Seller shall notify Purchaser of such real-time schedule changes as soon as possible. Seller shall not be liable for inaccuracies in Day-Ahead forecasts. If Seller fails to schedule for an hour, the presumed schedule for that hour shall be as set forth in the most recent WECC Day-Ahead schedule.



EXHIBIT C-1

Day-Ahead Schedule Example

BURBANK – SW WYOMING DAY-AHEAD FORECAST

Thursday

July 6, 2006

TRADER	HE (PPT)	Pleasant Valley TAG # 21962
TRADER	0100	15
	0200	9
	0300	8
	0400	8
	0500	8
	0600	9
	0700	8
	0800	9
TRADER	0900	9
	1000	9
	1100	10
	1200	12
	1300	13
	1400	15
	1500	15
	1600	15
	1700	13
	1800	9
	1900	5
	2000	3
TRADER	2100	0
	2200	0
	2300	0
	2400	5
	DAY TOTAL	207

## EXHIBIT D

### Example of Monthly True-Up Calculation

#### 1. Measurement Month X: Delivered Energy > 105% of Purchaser's Metered Amounts

Delivered Energy (On-Peak Hours):	4,300 MWh
Purchaser's Metered Amounts (On-Peak Hours):	4,000 MWh
Delivered Energy (Off-Peak Hours):	3,000 MWh
Purchaser's Metered Amounts (Off-Peak Hours):	2,600 MWh
Market Price Index (On-Peak Hours):	\$70.00/MWh
Market Price Index (Off-Peak Hours):	\$55.00/MWh

#### Monthly True-Up:

Purchaser Pays	=	$(4,300 \text{ MWh} - (4,000 \text{ MWh} \times 1.05)) \times (\$70/\text{MWh} - \$63/\text{MWh})$
	=	$100 \text{ MWh} \times \$7/\text{MWh}$
	=	\$700
Seller Pays	=	$(3,000 \text{ MWh} - (2,600 \text{ MWh} \times 1.05)) \times (\$63/\text{MWh} - \$55/\text{MWh})$
	=	$270 \text{ MWh} \times \$8/\text{MWh}$
	=	\$2,160

*Net Payment: Seller pays Purchaser \$1,460 for Measurement Month.*

#### 2. Measurement Month Y: Delivered Energy < 95% of Purchaser's Metered Amounts

Purchaser's Delivered Energy (On-Peak Hours):	3,300 MWh
Purchaser's Metered Amounts (On-Peak Hours):	4,000 MWh
Purchaser's Delivered Energy (Off-Peak Hours):	2,300 MWh
Purchaser's Metered Amounts (Off-Peak Hours):	2,600 MWh
Market Price Index (On-Peak Hours):	\$70.00/MWh
Market Price Index (Off-Peak Hours):	\$55.00/MWh

#### Quarterly True-Up:

Seller Pays	=	$((0.95 \times 4,000 \text{ MWh}) - 3,300 \text{ MWh}) \times (\$70/\text{MWh} - \$63/\text{MWh})$
	=	$500 \text{ MWh} \times \$7/\text{MWh}$
	=	\$3,500
Purchaser Pays	=	$((0.95 \times 2,600 \text{ MWh}) - 2,300 \text{ MWh}) \times (\$63/\text{MWh} - \$55/\text{MWh})$
	=	$170 \text{ MWh} \times \$8/\text{MWh}$
	=	\$1,360

*Net Payment: Seller pays Purchaser 2,140 for Measurement Month.*

**3. Measurement Month Z: Delivered Energy > 125% of Purchaser's Metered Amounts**

Delivered Energy (On-Peak Hours):	5,300 MWh
Purchaser's Metered Amounts (On-Peak Hours):	4,000 MWh
Delivered Energy (Off-Peak Hours):	3,300 MWh
Purchaser's Metered Amounts (Off-Peak Hours):	2,600 MWh
Market Price Index (On-Peak Hours):	\$70.00/MWh
Market Price Index (Off-Peak Hours):	\$55.00/MWh

**Monthly True-Up:**

Purchaser Pays	=	$(4,000 \text{ MWh} \times 1.25) - (4,000 \text{ MWh} \times 1.05) \times (\$70/\text{MWh} - \$63/\text{MWh})$
	=	$800 \text{ MWh} \times \$7/\text{MWh}$
	=	\$5,600
Seller Pays	=	$(2,600 \text{ MWh} \times 1.25) - (2,600 \text{ MWh} \times 1.05) \times (\$63/\text{MWh} - \$55/\text{MWh})$
	=	$520 \text{ MWh} \times \$8/\text{MWh}$
	=	\$4,160
>125% Refund	=	$[(5,300 \text{ MWh} - (4,000 \times 1.25) + 3,300 \text{ MWh} - (2,600 \text{ MWh} \times 1.25)] \times \$63/\text{MWh}$
	=	$350 \text{ MWh} \times \$63/\text{MWh}$
	=	22,050

*Net Payment: Seller pays Purchaser \$20,610 for Measurement Month.*

## EXHIBIT E

### FORM OF GUARANTY FROM SELLER'S GUARANTOR

#### GUARANTY

THIS PURCHASER GUARANTY, dated as of \_\_\_\_\_, 2006, is issued by Scottish Power Finance (US), Inc., a Delaware corporation, ("Guarantor") in favor of City of Burbank, a municipal corporation of the State of California ("Guaranteed Party"). PPM Energy, Inc., an Oregon corporation, ("Obligor") is a wholly owned subsidiary of Guarantor.

#### RECITALS

A. Obligor and Guaranteed Party have entered into a Long Term Power Purchase Agreement (Wind Power), dated as of June [\_\_\_], 2006 (the "Agreement").

B. This Guaranty is delivered to Guaranteed Party by Guarantor pursuant to the Agreement.

#### AGREEMENT

##### 1. Guaranty.

A. Guaranty of Obligations Under the Agreement. For value received, Guarantor hereby absolutely, unconditionally and irrevocably, subject to the express terms hereof, guarantees the payment when due of all payment obligations, whether now in existence or hereafter arising, by Obligor to Guaranteed Party pursuant to the Agreement (the "Obligations"). This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Obligations may be or become discharged or uncollectible in any bankruptcy, insolvency or other similar proceeding, or otherwise unenforceable.

B. Maximum Guaranteed Amount. Notwithstanding anything to the contrary herein, Guarantor's aggregate obligation to Guaranteed Party hereunder is limited to TWO HUNDRED FIFTY THOUSAND U.S. Dollars (\$250,000) (the "Maximum Guaranteed Amount") (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to the Guaranteed Party, pursuant to a demand made upon Guarantor by Guaranteed Party or otherwise made by Guarantor pursuant to its obligations under this Guaranty including any indemnification obligations, shall reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis), including costs and expenses incurred by Guaranteed Party in enforcing this Guaranty, and shall not either individually or in the aggregate be greater or different in character or extent than the obligations of Obligor to Guaranteed Party under the terms of the Agreement. IN NO EVENT SHALL GUARANTOR BE SUBJECT TO ANY CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS, PUNITIVE, TORT OR OTHER SIMILAR DAMAGES; *provided, however*, that the preceding clause does not limit Guaranteed Party's

ability to seek available equitable remedies (such as a writ of attachment) solely for the purpose of enforcing any judgment obtained against Guarantor pursuant to this Guaranty.

2. Payment; Currency. All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds and shall be made in the currency in which the Obligations were due. If Obligor fails to pay any Obligation when due, the Guarantor will pay that Obligation directly to Guaranteed Party within five (5) days after written notice to Guarantor by Guaranteed Party. The written notice shall provide a reasonable description of the amount of the Obligation and explanation of why such amount is due.

3. Waiver of Defenses. Except as set forth above, Guarantor hereby waives notice of acceptance of this Guaranty and of the Obligations and any action taken with regard thereto, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of the Obligations, suit, or the taking of and failing to take other action by Guaranteed Party against Obligor, Guarantor or others and waives any defense of a surety. Without limitation, Guaranteed Party may at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (a) make any change to the terms of the Obligations; (b) take or fail to take any action of any kind in respect of any security for the Obligations; (c) exercise or refrain from exercising any rights against Obligor or others in respect of the Obligations or (d) compromise or subordinate the Obligations, including any security therefor. Notwithstanding the foregoing, Guarantor shall be entitled to assert rights, setoffs, counterclaims and other defenses which Obligor may have to performance of any of the Obligations, other than defenses based upon lack of authority of Obligor to enter into and/or perform its obligations under the Agreement or any insolvency, bankruptcy, reorganization, arrangement, composition, liquidation, dissolution or similar proceeding with respect to Obligor.

4. Term. This Guaranty shall continue in full force and effect until the expiration or termination of the Agreement or as otherwise provided in the Agreement. Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise. Guaranteed party shall return this original executed document to Guarantor within twenty (20) days of termination of this Guaranty..

5. Subrogation. Until all Obligations are indefeasibly performed in full, but subject to Section 6 hereof, Guarantor hereby waives all rights of subrogation, reimbursement, contribution and indemnity from Obligor with respect to this Guaranty and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations.

6. Expenses. Whether or not legal action is instituted, Guarantor agrees to reimburse Guaranteed Party on written demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Guaranteed Party in enforcing its rights under this Guaranty. Notwithstanding the foregoing, the Guarantor shall have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment under Section 2 hereof.

7. Assignment. Guarantor may not assign its rights or delegate its obligations under this Guaranty in whole or part without written consent of Guaranteed Party, *provided, however*, that Guarantor may assign its rights and delegate its obligations under this Guaranty without the consent of Guaranteed Party if (a) such assignment and delegation is pursuant to the assignment and delegation of all of Guarantor's rights and obligations hereunder, in whatever form Guarantor determines may be appropriate, to a partnership, limited liability company, corporation, trust or other organization in whatever form that succeeds to all or substantially all of Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, *provided*, such entity has an Investment Grade Rating by either Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc. ("S&P") or (b) such assignment and delegation is made to an entity within the Scottish Power plc wholly-owned group of companies that has an Investment Grade Rating by either Moody's or S&P. For purposes of this Section 7, "Investment Grade Rating" means a minimum credit rating for senior unsecured debt or corporate credit rating of BBB- by S&P or Baa3 by Moody's. Upon any such delegation and assumption of obligations and, if required, the written consent of Guaranteed Party (which consent shall not be unreasonably withheld, conditioned or delayed), Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption.

8. Non-Waiver. The failure of Guaranteed Party to enforce any provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same. All remedies of Guaranteed Party under this Guaranty shall be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. The terms and provisions hereof may not be waived, altered, modified or amended except in a writing executed by Guarantor and Guaranteed Party.

9. Entire Agreement. This Guaranty and the Agreement are the entire and only agreements between Guarantor and Guaranteed Party with respect to the guaranty of the Obligations of Obligor by Guarantor. All agreements or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

10. Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by Guarantor or by Guaranteed Party shall be in writing and shall be deemed received (a) if given personally, when received, (b) if mailed by certified mail (postage prepaid and return receipt requested), five days after deposit in the U.S. mails, (c) if given by facsimile, when transmitted with confirmed transmission or (d) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Guaranteed Party shall specify in a notice delivered to the other in accordance with this Section):

If to Guarantor:

Scottish Power Finance (US), Inc.  
1125 NW Couch, Suite 700  
Portland, Oregon 97209  
Attn: Treasurer/Credit Manager

If to Guaranteed Party:

Chief Financial Officer  
Burbank Water and Power  
Robert Liu  
P.O. Box 631  
Burbank, CA 91503-0631

11. Counterparts. This Guaranty may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument.

12. Governing Law; Jurisdiction. This Guaranty shall be governed by and construed in accordance with the laws of the state of California without giving effect to principles of conflicts of law.

13. Further Assurances. Guarantor shall cause to be promptly and duly taken, executed and acknowledged and delivered, such further documents and instruments as Guaranteed Party may from time to time reasonably request in order to carry out the intent and purposes of this Guaranty.

14. Limitation on Liability. Except as specifically provided in this Guaranty, Guaranteed Party shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Obligor in the Agreement.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty as of the date first set forth above.

**Scottish Power Finance (US), Inc.,  
a Delaware corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*Acknowledged and agreed:*

**CITY OF BURBANK, a municipal corporation  
of the State of California**

By: \_\_\_\_\_  
Ronald E. Davis - General Manager  
Burbank Water and Power

ATTEST:  
Office of the City Clerk

By: \_\_\_\_\_  
Margarita Campos, City Clerk

Approved as to Form and Legal Content:  
Dennis Barlow, City Attorney

By: \_\_\_\_\_  
Richard J. Morillo  
Sr. Asst. City Attorney



## **EXHIBIT F**

### **METERING PROVISIONS**

#### **1. Measurement When Meters are Out of Service or Registering Inaccurately.**

If any of Project Owner's Meters is out of service or is determined to be registering inaccurately, measurement of Metered Output delivered hereunder shall be determined as follows and in the order indicated:

- (a) by check meters installed by Seller, if they have been installed and are operational pursuant to the Project PPA; or
- (b) by using Seller's RTU (pulse accumulator meter) history data (if any) and applying appropriate transformer loss factors once the RTU and Project Owner's Meters are proven to be within the accuracy specifications for each instrument; or
- (c) by using the integrated instantaneous Megawatt value used to monitor the composite turbine output from the computer monitoring system; or
- (d) by using the MWh history files stored in the substation relays and applying appropriate transformer loss factors; or
- (e) by the computer monitoring system for each wind turbine at the Project, using a mathematical calculation agreed upon by the Parties to adjust the output thereof to account for electrical losses in the gathering system and turbine transformers and substation transformers up to the Project's busbar; or
- (f) by Project Owner's estimating by reference to the measurements made during other comparable time periods having similar wind-generating conditions when the Project Owner's Meters were registering accurately, such estimate being subject to Purchaser's approval, not to be unreasonably withheld, conditioned or delayed; or
- (g) if no reliable information exists as to the period over which such Meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made, or (ii) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Meter through the date of the adjustments; *provided further, however*, that in the case of clause (ii) the period covered by the correction shall not exceed six (6) months.

#### **2. Disputes Concerning Meter Accuracy.**

- (a) If either Party disputes a Meter's accuracy or condition, it shall so advise the other Party in writing.
- (b) If the Parties are unable to reach consensus as to the Meter's accuracy or condition through reasonable negotiations, then either Party may submit such dispute to an

unaffiliated third-party engineering company mutually acceptable to the Parties to test the Meter. Seller shall arrange for such testing with the Project Owner or PacifiCorp or its successor.

(c) Should the Meter be found to register within the permitted one-half percent (0.5%) variance, the disputing Party shall bear the cost of inspection; otherwise, the cost shall be borne by the Seller.

(d) Any repair or replacement shall be made at the expense of the Seller or Project Owner as soon as practicable, based on the third-party engineer's report.

(e) Following testing, corrections shall be made as follows:

(1) If any Meter is found to be accurate or to be in error by not more than the permitted one-half percent (0.5%) variance, previous recordings of such Meter shall be considered accurate in computing Metered Output hereunder, and the Meter shall be promptly adjusted to record correctly.

(2) If any Meter is found to be in error by an amount exceeding the one-half percent (0.5%) variance, then such Meter shall be promptly adjusted to record correctly and any previous recordings by such Meter shall be adjusted in accordance with this Exhibit.